

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**BETWEEN**

**BRIDGING FINANCE INC., as agent for  
2665405 ONTARIO INC.**

**Applicant**

**-and-**

**1033803 ONTARIO INC. and 1087507 ONTARIO LIMITED**

**Respondents**

**THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED;  
AND SECTION 101 OF THE COURTS OF JUSTICE ACT,  
R.S.O. 1990, c. C.43, AS AMENDED  
MOD DEVELOPMENTS RESPONDING MOTION RECORD  
(Motion Returnable November 4, 2022)**

September 16, 2022

**MILLER THOMSON LLP**  
Vaughan Metropolitan Centre  
100 New Park Place, Suite 700  
Vaughan, ON L4K OH9

**Michael Farace** (LSO #: 29852S)  
Tel: 905.532.6618  
mfarace@millerthomson.com

Lawyers for MOD Developments

TO: **TORYS LLP**  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, ON M5K 1N2

**Scott A. Bomhof** (LSO #: 37006F)  
416.865.7370  
sbomhof@torys.com

**Jeremy Opolsky** (LSO #: 60813N)  
416.865.8117  
jopolsky@torys.com

**R. Craig Gilchrist** (LSO #: 77315B)  
416.865.7629  
cgilchrist@torys.com

Lawyers for KSV Kofman Inc.,  
in its capacity as Court-appointed Receiver for  
1033803 Ontario Inc. and 1087507 Ontario

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# TAB A

Court File No.: CV-18-608978-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BRIDGING FINANCE INC. AS AGENT FOR 2665405 ONTARIO INC.

Applicant

- and -

1033803 ONTARIO INC. AND 1087507 ONTARIO LIMITED

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS  
AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O.  
1990, C. C.43, AS AMENDED

**AFFIDAVIT OF AIDAN BALL  
(Affirmed September 16, 2022)**

I, Aidan Ball, of the Town of Uxbridge, in the Province of Ontario, AFFIRM AND SAY:

1. I am the Director of Construction for MOD Developments Inc. that provides management service to the Defendant MOD DEVELOPMENTS (197 YONGE) LIMITED PARTNERSHIP (“MOD”), and as such have knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters to which I hereinafter depose, I state the source of that knowledge and verily believe same to be true.

2. Attached hereto and marked as **Exhibit “1”** to this my affidavit is a true copy of the CCDC 17 -2010 contract, dated December 19, 2014 (“Contract”), that MOD entered into as owner with Forma-Con Construction (A DIVISION OF 1428502 ONTARIO LIMITED) (“1428502”) as Trade Contractor for the high-rise condominium project known as Massey Tower at 197 Yonge Street, Toronto, Ontario (“Project”). The Contract is a standard form agreement and is amended by the terms that were negotiated between the parties that are attached as

Supplementary Conditions. Section GC 1.4.1 in the Supplementary Conditions states “Neither party to the Contract shall assign the Contract or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.” I have reviewed the Contract documents and MOD’s communications for the Project and confirm that MOD was never asked by the Contract’s counter-contracting party to allow it to assign the Contract or any part thereof to anyone else.

3. I note that at the page 46 of the Contract, Michael Solano (“Solano”) signed the Contract as President on behalf of 1428502 and that at page 4 of the Contract the email address for notice to be provided to 1428502 is michaelcsolano@forma-con.com.

4. Pursuant to the Contract, 1428502 was to provide the following (but not limited to) to the Project: concrete forming and false work, void forming, concrete placing and finishing, temporary shoring, hoisting and placing of all reinforcing steel and concrete accessories.

5. In or about the middle of December 2018, MOD was informed by KSV Kofman Inc. (“KSV”) that pursuant to an order of the Ontario Superior Court of Justice (Commercial List) made on November 19, 2018 (the “Receivership Order”), KSV as Receiver was appointed receiver and manager of: (a) all of the assets, undertakings and properties of 1033803 Ontario Inc. (“103”) (operating as Forma-Con Construction and Forma Finishing) and 1087507 Ontario Limited; (b) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.

6. Attached hereto and marked as **Exhibit “2”** to this my affidavit is a true copy of the Receivership Order made on November 19, 2018.

7. The Receivership Order does not state that KSV is the Receiver for 1428502 nor does it reference 1428502 at all. The party to the Contract with MOD, 1428502, is not a corporation over which KSV has capacity as Receiver and Manager, since it is not named in the Receivership Order.

8. Attached hereto and marked as **Exhibit “3”** to this my affidavit is a true copy of a letter dated December 21, 2018, marked “Without Prejudice” from MOD’s lawyer addressed and sent to KSV and referred to the signature page of the Contract. In this letter in the last paragraph at

the bottom of the first page that carries over to the top of page 2, KSV is informed that the Receivership Order pertains to two companies neither of which is the counterparty to the Contract with respect to the Project and that the counterparty to the Contract is 1428502 that is a corporation that is not subject to the KSV's capacity or jurisdiction. The parts of the letter attached as Exhibit "3" to this my affidavit over which privilege is claimed have been redacted.

9. Attached hereto and marked as **Exhibit "4"** to this my affidavit is a true copy of KSV's Statement of Claim ("Statement of Claim"), issued on March 13, 2019 in the Ontario Superior Court of Justice court file number CV-19-00616137-0000 in support of its construction lien claim ("Lien Action").

10. The party named as Plaintiff in the Statement of Claim is: KSV KOFMAN INC. in its capacity as Court-appointed receiver and manager, without security, of all of the assets, undertakings and properties of 1033803 ONTARIO INC., operating as Forma-Con Construction and Forma Finishing ("Forma-Con"), and 1087507 ONTARIO INC. (together with Forma-Con, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors.

11. I have read the Lien Action's Statement of Claim and the construction lien attached to it as a Schedule and note that at paragraph 5 of the Statement of Claim that KSV makes a claim that entered into the Contract with MOD to provide work and materials in connection with the project. Furthermore at paragraphs 7 and 8 of the Statement of Claim, KSV claims that as of December 14, 2018, it made improvements to the Project site valued at \$2,038,704.26 for which it has not been paid by MOD and that failure to pay by MOD is a breach of Contract.

12. I have reviewed the Contract and have determined that KSV named as a Plaintiff in the Lien Action's Statement of Claim and that 103 are not a party to the Contract.

13. I have reviewed the Contract and the Statement of Claim in the Lien Action and have determined that 1428502 is a party to the Contract and that 1428502 is not a party to the Lien Action commenced by KSV.

14. Attached hereto and marked as **Exhibit "5"** to this my affidavit is a true copy of the MOD's Amended Statement of Defence and Counterclaim ("Statement of Defence"), originally dated and served on or about July 15, 2019 and Court stamped as amended November 18,



2020. The amendments relate to dollar values claimed in paragraphs 15, 16, 17 and 20. The amount claimed by MOD in its counterclaim is \$7,227,788.30, plus applicable HST.

15. I note that in paragraph 3 of the Statement of Defence, MOD states “The Defendant engaged Forma-Con Construction (A DIVISION OF 1428502 ONTARIO LIMITED) (“Forma-Con”) by contract dated December 19, 2014 (“Contract”) for Forma-Con to provide concrete forming and falsework, void forming, concrete placing and finishing, temporary shoring, hoisting, coordination management of rebar placement, and the supply and installation of concrete accessories (“Work”) for the contract price including applicable taxes in the amount of \$23,084,770.00. The Defendant never entered into a contract with the Plaintiff for the Work. However, the Defendant did enter into a written agreement on December 27, 2018 (“Close Out Agreement”) with the Plaintiff to complete some of the Work that was not completed by Forma-Con. The appointment of the receiver KSV Kofman Inc. (“KSV”) occurred on November 19, 2018 by Court Order. For the purposes of this pleading and in order to maintain clarity, Forma-Con and the Plaintiff are different and distinct entities.”

16. Attached here to and marked as **Exhibit “6”** to this my affidavit is a true copy of KSV’s Reply and Defence to counterclaim (“Reply”). At paragraph 1 of the Reply the Plaintiff states that it denies that Forma-Con and the KSV are different and distinct corporate entities. Also in paragraph 1 of the Reply, KSV states that it agreed with MOD that the entity mutually understood to be Forma-Con would perform work specified in the Contract and that Forma-Con/the Plaintiff did perform that work.

17. Attached hereto and marked as **Exhibit “7”** is true a copy of the Close Out Agreement, dated December 27, 2018. The purpose of the Close Out Agreement was to have KSV complete the unfinished work (“Unfinished Work”) of 1428502 as it existed at the time of the Receivership Order. The Unfinished Work was identified and listed in Schedule A to the Close Out Agreement and particularized as “Commencing on December 27, 2018 or as soon reasonably practicable thereafter given that personnel availability may be limited during the 2018 holiday season, the Receiver shall use commercially reasonable efforts to cause the Service Provider to provide the following personnel and equipment for 15 working days, or such longer period as the Parties may agree to in writing: 1. Crane Rental; 2. Crane Operator; and 3. Crane

Swamper.” There was never any agreement stated in the Close Out Agreement that KSV was a party to the Contract. At the Recital number 3 in the Close Out Agreement it states “In respect of payments pursuant to the Construction Contract as of the Effective Date, the Owner has, in accordance with the Construction Act R.S.O. 1990, c. C30 (the “Construction Act”), held back \$2,038,704.26 (which is net of taxes) of the Contract Price which is subject to the terms and conditions of the Construction Contract and the Construction Act (the “Holdback”)”. At Recital number 5 of the Close Out Agreement it states “Subject to Recital 3 above, the Holdback is Property (as such term is defined in the Receivership Order) over which the Receiver has been appointed receiver and manager pursuant to the Receivership Order.”. The Holdback as referred to in Recital number 5, is subject to, as stated in Recital number 3, the terms and conditions of the Construction Contract and the Construction Act.

18. At paragraph 1.6 of the Close Out Agreement it states: “Notwithstanding the Parties agreement on the terms for performance of the Services pursuant to this Agreement, the Parties acknowledge and agree that: (a) entering into this Agreement is without prejudice to the Parties’ rights as it relates to disputes regarding the identity of the counterparty to the Owner under the Construction Contract (1428502 Ontario Limited versus 1033803 Ontario Inc.)”. This paragraph 1.6 preserves the rights of the parties’ rights as to disputes relating to the identity of the counterparty to the Owner under the Contract.

19. Attached hereto and marked as **Exhibit “8”** to this my affidavit is true copy of Certificate of No Match (“Certificate”) from the Ministry of Government and Consumer Services that states that a record could not be found for 1428502 Ontario Limited.

20. Attached here to and marked as **Exhibit “9”** to this my affidavit is a true copy of the corporate profile for Second Floor Ltd. that shows it has the Ontario Corporation Number 1428502.

21. Attached here to and marked as **Exhibit “10”** to this my affidavit are true copies of the Applications for Payment numbers 1 through to and including 15 as well as WSIB clearance certificates delivered to MOD for the Project. Application for Payment #1 is dated October 31, 2015 and Application for Payment #15 is dated December 20, 2016. Commencing on the date of October 31, 2015 through to and including December 20, 2016 the Application for Payments

attached as Exhibit "10" hereto all have on their letterhead as being issued by "FORMA-CON CONSTRUCCION (A DIVISION OF 1428508 ONTARIO LIMITED). I also note that on each of the WSIB clearance certificates attached to the Applications for Payment #1 to #15 the contractor's name is shown as "1428508 ONTARIO LIMITED/FORMA-CON CONSTRUCTION" in the first box on the left of the certificate. Also attached to the Application for Payment #1 is a copy of a certificate of insurance that names the insured as "Forma Con Construction a Division of 1428508 Ontario Limited".

22. Attached here to and marked as **Exhibit "11"** to this my affidavit is a true copy of the corporate profile of 1428508 Ontario Limited ("1428508") that shows Solano as its officer and director as well as 1428508 having a status on page 1 as "Voluntary Dissolution" and that the last document recorded with the Ministry of Government Services was Articles of Dissolution that were filed for 1428508 on June 6, 2016. Based on this information 1428508 was dissolved on June 6, 2016. I note that 1428508 continued to deliver to MOD Applications for Payment up until December 20, 2016 even though it was dissolved 6 months earlier on June 6, 2016. At page 6 of this corporate profile for 1428508 it shows that 1428508 had a business name "FORMA-CON CONSTRUCTION" that was registered on August 1, 2000 expired July 31, 2005.

23. The first 24 pages of KSV's 10<sup>th</sup> Report ("10<sup>th</sup> Report"), dated August 15, 2022, are attached hereto and marked as **Exhibit "12"**. At paragraph 2.3 (2 to 4) it states that 1428508 was dissolved by a Resolution on December 31, 2014 ("Dissolution Resolution"). MOD was unaware of this Dissolution Resolution until it received a copy of KSV's 10<sup>th</sup> Report on or about August 15, 2022. Attached here to and marked as **Exhibit "13"** is a copy of the Dissolution Resolution appearing in Tab "O" of the 10<sup>th</sup> Report. MOD was unaware, prior to MOD bringing its motion dismiss the Lien Action, that 1428508 had been dissolved on December 31, 2014. Based on the Dissolution Resolution, it appears that 1428508 was dissolved 12 days after the Contract was signed, by the parties thereto, on December 19, 2014. The first time that MOD was provided with and became aware of the corporation documents, attached at Tabs D to H, O to Q as to 1428508 and the document attached at Tab N as to 103 to the 10<sup>th</sup> Report, was when the 10<sup>th</sup> Report was delivered by KSV's lawyer's to MOD's lawyer on August 15, 2022.

24. At paragraph 2.4 (16) of KSV's 10th Report, it states that if consent to assign the Contract was required, that KSV has not found any evidence that express consent was provided by MOD. I verily believe that MOD never had or received any notice of the assignment of the Contract as alleged by KSV and furthermore that MOD never consented to an assignment of the Contract by the actions of anyone else.

25. I note that 1428508 continued to make and submit Applications for Payment to MOD as described in paragraph 21 above, up until December 20, 2016 even though it was dissolved by the Dissolution Resolution on December 31, 2014 and then filed with the Ministry of Government Services Articles of Dissolution for 1428508 on June 6, 2016.

26. Attached here to and marked as **Exhibit "14"** to this my affidavit is a true copy the Articles of Dissolution for 1428508 which at page 2 shows it was signed by 1428508's President and Secretary as well as a copy of a Letter of Consent to Dissolve from Ontario's Ministry of Finance and 1428508's lawyer's letter, dated June 21, 2016, requesting a Certificate and Articles of Dissolution be provided with an effective date of June 21, 2016.

27. Based on what is set out in paragraphs 2, 3, 7, 8, 12, 13, 15, 18, 19, and 20 above, it appears that 1428502 due to an error was not properly named in the Contract and should have been named as 1428508.

28. Attached here to and marked as **Exhibit "15"** to this my affidavit are true copies of the Applications for Payment numbers 16 through to and including 36 as well as WSIB clearance certificates delivered to MOD for the Project. Application for Payment #16 is dated January 20, 2017 and Application for Payment #36 is dated November 22, 2018. Commencing on the date of January 20, 2017 through to and including November 22, 2018 the Application for Payments attached as Exhibit "12" hereto all have on their letterhead as being issued by "FORMA-CON CONSTRUCCION (A DIVISION OF 1033803 ONTARIO INC.)", except for Application for Payment #30 dated March 20, 2018, wherein on its letterhead it shows as being issued by "FORMA-CON CONSTRUCCION (A DIVISION OF 1428508 ONTARIO LIMITED). I also note that on each of the WSIB clearance certificates where they were attached to the Applications for Payment #18 to #36 the contractor's name is shown as "1033803 ONTARIO INC./FORMA-CON CONSTRUCTION/ FORMA FINISHING" in the first box on the left of the

certificate, however on Applications for Payment #16 AND #17 the WSIB certificates show "1428508 ONTARIO LIMITED/FORMA-CON CONSTRUCTION". Attached within Exhibit "15" hereto commencing with the Application for Payment #21, dated June 20, 2017, are insurance certificates as to the Project that show the named insured as "Forma-Con Construction a Division of 1033803 Ontario Limited".

29. Attached here to and marked as **Exhibit "16"** to this my affidavit is a true copy of the corporate profile for 103. This corporate profile shows that Silano was never an officer and director of 103.

30. Steven Aquino in his affidavit sworn August 11, 2022, at paragraph 4 states that he understood that both 1428508 and 103 carried on business under the name Forma Con Construction.

31. Attached here to and marked as **Exhibit "17"** to this my affidavit is a true copy of the First Report of KSV as Trustee in Bankruptcy of 1033803 Ontario Inc. dated February 21, 2020 ("First Report"). This First Report is available on line KSV's website at [www.ksvadvisory.com](http://www.ksvadvisory.com). In the First Report it states: a) at article 1.2 in paragraph 1 at page 3 that the Receiver for 103 on December 19, 2019 filed assignments in bankruptcy for 103; b) at article 1.2 in paragraph 2 at page 3 confirms that KSV, as Trustee, was to conduct an investigation to pursue undervalued transfers involving 103; at article 1.2 in paragraph 4 b. at page 3 that KSV commenced an application to seek an order against the Estate of Michael Solano and others including the principals of 103 to pay to Forma Con the values of the payments received by Supplier Respondents through Impugned Transactions (shown to have a value of approximately \$34 million for no consideration as set out in the First Report's Article 2.3 in paragraph 1 at page 5) and being part of a false invoicing scheme.

32. In the First Report's Article 2.0 Investigations, in paragraphs 1 and 2 at page 4, it is stated that Solano was an IT Manager for the Group that includes Forma Con (which includes 103) and that Solano sent over 100 emails to individuals acting on behalf of Suppliers (whose transactions form part of the Impugned Transactions) to instruct them on: amounts to be invoiced to the Group; description that should be included in invoices for that work or supply, and the projects to be charged.

33. In the First Report's Article 2.0 in paragraph 2 it states that the Trustee understands that Solano died in January 2017.

34. At page 9 of the First Report is a copy of a cheque #128659, dated June 4, 2015, from Forma-Con Construction (A Division of 1428508 Ontario Limited) that was paid to a Supplier of interest in the amount of \$349,283.00

35. Attached here to and marked as **Exhibit "18"** is a true copy of the first 36 pages of the Second Report of KSV Kofman Inc. as Trustee in Bankruptcy of 1033803 Ontario Inc. and 1087507 Ontario Limited, dated May 7, 2020, ("Second Report") that is available on line at KSV's website at [www.ksvadvisory.com](http://www.ksvadvisory.com). This Second Report is 363 pages in length and I have only attached the first 36 pages for the sake of brevity and keeping the volume of this Exhibit 18 to a reasonable length. In this Second Report it is stated at: a) page 4 at article 1.2.1 that the Receiver for 103 and 1087507 Ontario Limited on December 19, 2019 filed assignments in bankruptcy for 103 and 1087507 Ontario Limited; b) page 4 at article 1.5 b. the Trustee was authorized to commence a court application seeking an order that the Estate of Michael Solano and others shall jointly and severally pay to Forma Con the value of payment received by Supplier Respondents for invoices that, are described in article 2.3 of the Report, as being submitted by Supplier Respondents having not provided any goods or services to Forma Con ("False Invoicing Scheme"). At page 8 through to 20 of the Second Report is a copy of the Trustee's Notice of Application, issued by the court on February 21, 2020 in court file number CV-20-00636754-00CL ("KSV 2020 Application") , wherein relief is sought against the Estate of Michael Solano. In this Notice of Application paragraph in (gg) (iv) at page 17, the Trustee states that "Solano was a relative of John Aquino and was an active participant in the invoicing scheme, including by instructing various Supplier Respondents on invoicing matters and executing Forma-Con cheques;".

36. Attached hereto and marked as **Exhibit "19"** are true copies of 2 cheques numbered 130711 and 130712 that are attached to the Second Report respectively at pages 82 and 85 both dated September 11, 2015 that show the payor to be 1428508. These 2 cheques have been produced as Exhibit 19 hereto as they appear in their original size in the Second Report and are

difficult to read all details given their size. These 2 cheques have also been enlarged and are included in Exhibit 19 hereto in order to make the details therein easier to read. There are 58 other cheques in the Second Report, located between pages 87 to 363, 57 of these cheques show 1428508 as payor and 1 cheque shows the payer as 1033803 Ontario Inc. These 58 other cheques are too difficult to read when printed out and therefor I have not attached them to this my affidavit, however they can be viewed at the website of KSV: [www.ksvadvisory.com/docs/default-source/insolvency-case-documents/1033803-ontario-inc/bankruptcy-proceedings/reports/forma-con---2nd-report-of-trustee-9th-report-of-receiver.pdf?sfvrsn=476456d5\\_0](http://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/1033803-ontario-inc/bankruptcy-proceedings/reports/forma-con---2nd-report-of-trustee-9th-report-of-receiver.pdf?sfvrsn=476456d5_0). The last cheque #137359 that is attached to the Second Report is located at page 362 and is dated July 25, 2017 showing the payor as 1033803 Ontario Inc.

37. Attached hereto and marked as **Exhibit “20”** is a copy of the Ontario Superior Court of Justice reported decision, dated March 19, 2021, as to the KSV 2020 Application wherein the court at paragraph 2 identifies 103 as commonly known as Forma-Con Construction and in paragraphs 26 to 42, 116 to 130, sets out the details of the false invoicing scheme and determines that a false invoicing scheme involving 103 had taken place. The Judge found in the KSV 2020 Application that between December 19, 2014 and December 19, 2019, that Bondfield and its affiliate 103 had illegitimately paid out tens of millions of dollars to its principal and others under the false invoicing scheme described in KSV’s First Report.

38. Attached here to and marked as **Exhibit “21”**, is a copy of the Ontario Court of Appeal decision as to the KSV 2020 Application, dated March 10, 2022. This reported case relates to the court’s decision described in paragraph 37 above. The Court of Appeal upheld the decision of the Judge that heard and decided the KSV 2020 Application.

39. Attached here to and marked as **Exhibit “22”** are copies of emails and insurance certificates (collectively referred to as “Emails and Insurance Certificates”) that appear in tabs “W” to “Z” and “AA” to “FF of the 10th Report. I have reviewed the Emails and Insurance Certificates and found that they do not contain any agreement for the Contract to be assigned to 103. I verily believe that the purpose of the Emails and Insurance Certificates was to have 103

added as certificate holder as to insurance policies of various trade contractors and for no other purpose.

40. Contrary to what is stated in paragraph 2.4 (11) of KSV's 10<sup>th</sup> Report, the Emails and Insurance Certificates do not provide notice that 1428508 was the original counterparty to the Contract or that 103 assumed the obligations of 1428508, nor do they show that the construction manager Tucker Hi-Rise was aware of an assignment of the Contract and acknowledged that 103 was a proper assignee.

41. In paragraphs GC 2.1 and GC 2.2 of the Contract, the role and authority of the construction manager, Tucker H-Rise, are stated. In these 2 paragraphs there is no wording or provision whatsoever that the construction manager could acknowledge the parties to the Contract are being changed or that the Contract is being assigned by conduct or in any other manner.

42. I make this affidavit in support of MOD's opposing the motion brought by the Receiver in the Commercial Court to determine if 1428508 is a proper party to the Contract as well as other relief requested.

**AFFIRMED BEFORE ME:**  in person  by video conference

By Aidan Ball at the Town of Uxbridge, in the Province of Ontario, before me at the City of Vaughan on September 16, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)

  
\_\_\_\_\_  
Signature of Commissioner  
Michael Farace, Lawyer, LSO# 29852S

  
\_\_\_\_\_  
Signature of Deponent  
Aidan Ball



Bridge Finance Inc as agent for 2665405  
Ontario Inc.

1033803 ONTARIO INC., et al.  
and Respondents

Court File No.: CV-19-00616137-0000

Applicant

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AFFIDAVIT OF AIDAN BALL**  
**(Affirmed September 16, 2022)**

MILLER THOMSON LLP  
VAUGHAN METROPOLITAN CENTRE  
100 NEW PARK PLACE, SUITE 700  
VAUGHAN, ON CANADA L4K 0H9

Michael Farace LSO#: 29852S  
mfarace@millerthomson.com  
Tel: 905.532.6618

Lawyers for MOD DEVELOPMENTS (197  
YONGE) LIMITED PARTNERSHIP

This is Exhibit <sup>“1”</sup> referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



A commissioner for taking Affidavits

**CCDC 17**

Stipulated Price Contract between  
Owner and Trade Contractor  
for Construction Management Projects

2010

Massey Tower

Forma-Con

Apply a CCDC 17 copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 17 – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE  
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE

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GC 3.10	Shop Drawings
GC 3.11	Use of the Site
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GC 5.3	Progress Payment
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GC 12.3	Warranty

CCDC 17 and CCDC 5A 'Construction Management Contract-For Services' are complimentary documents. CCDC 17 is the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. It reflects recommended industry practices. CCDC 17 can have important consequences. The CCDC and its constituent member organizations do not accept any responsibility or liability for loss or damage which may be suffered as a result of the use or interpretation of CCDC 17.

**AGREEMENT BETWEEN OWNER AND TRADE CONTRACTOR  
FOR CONSTRUCTION MANAGEMENT PROJECTS**

This Agreement made on the 19 day of December in the year 2014 .

by and between the parties

MOD Developments (197 Yonge) Limited Partnership

hereinafter called the *Owner*

and

Forma-Con Construction ( A DIVISION OF 1428502 ONTARIO LIMITED)

hereinafter called the *Trade Contractor*

The *Owner* and the *Trade Contractor* agree as follows:

**ARTICLE A-1 THE WORK**

The *Trade Contractor* shall:

1.1 perform the *Work* required by the *Contract Documents* for

Concrete forming and falsework, void forming, concrete placing and finishing, temporary shoring, re-shoring, hoisting, and placing of all reinforcing steel and concrete accessories

*insert above the description of the Work*

for the *Project*

Massey Tower

Forma-Con

*insert above the title of the Project*

located at

197 Yonge Street, Toronto, Ontario Canada

*insert above the Place of the Project*

for which the Agreement has been signed by the parties, and for which

Tucker HiRise Construction Inc.

*insert above the name of the Construction Manager*

is acting as and is hereinafter called the *Construction Manager*, and for which

Hariri Pontarini Architects

*insert above the name of the Consultant*

is acting as and is hereinafter called the *Consultant*, and for which

the *Construction Manager*\* / *Consultant*\* is acting as the *Payment Certifier*, and (\* Strike out inapplicable term.)

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1.2 do and fulfill everything indicated by the *Contract Documents*, and

1.3 perform the *Work*:

- .1 in accordance with a schedule provided by the *Owner* at the time of signing the *Contract*, or
- .2 in accordance with a schedule mutually agreed upon if provided by the *Owner* after the signing of the *Contract*; or
- .3 if no schedule is provided by the *Owner*, commence the *Work* by the            day of            in the year            and, subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work*, by the            day of            in the year            .

**ARTICLE A-2 AGREEMENTS AND AMENDMENTS**

2.1 The *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the *Work*, including the bidding documents that are not expressly listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS.

2.2 The *Contract* may be amended only as provided in the *Contract Documents*.

**ARTICLE A-3 CONTRACT DOCUMENTS**

3.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – THE WORK:

- Agreement Between *Owner* and *Trade Contractor*
- Definitions
- The General Conditions of the *Contract*

\*  
The additional documents listed on Appendix C of this Agreement are part of the Contract Documents.

\* (Insert here, attaching additional pages if required, a list identifying all other Contract Documents e.g. supplementary conditions; information documents; specifications, giving a list of contents with section numbers and titles, number of pages, and date; material finishing schedules; drawings, giving drawing number, title, date, revision date or mark; addenda, giving title, number, date; schedule)

2  
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#### ARTICLE A-4 CONTRACT PRICE

4.1 The *Contract Price*, which excludes *Value Added Taxes*, is:

Twenty Million Four Hundred Twenty-Nine Thousand Dollars /100 dollars \$ 20,429,000.00

4.2 *Value Added Taxes* (at 13 %) payable by the *Owner* to the *Trade Contractor* are:

Two Million Six Hundred Fifty-Five Thousand Seven Hundred & Seventy Dollars /100 dollars \$ 2,655,770.00

4.3 Total amount payable by the *Owner* to the *Trade Contractor* for the *Work* is:

Twenty-Three Million Eighty-Four Thousand Seven Hundred & Seventy Dollars /100 dollars \$ 23,084,770.00

4.4 These amounts shall be subject to adjustments as provided in the *Contract Documents*.

4.5 All amounts are in Canadian funds.

#### ARTICLE A-5 PAYMENT

5.1 Subject to the provisions of the *Contract Documents*, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of Ten percent ( 10 %), the *Owner* shall:

- .1 make progress payments to the *Trade Contractor* on account of the *Contract Price* when due in the amount certified by the *Payment Certifier* together with such *Value Added Taxes* as may be applicable to such payment, and
- .2 upon *Substantial Performance of the Work*, pay to the *Trade Contractor* the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
- .3 upon the issuance of the final certificate for payment, pay to the *Trade Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.

5.2 In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made to the *Trade Contractor* in accordance with the provisions of GC 11.1 – INSURANCE.

5.3 Interest

- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:

(1) 2% per annum above the prime rate for the first 60 days.

(2) 4% per annum above the prime rate after the first 60 days.

Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

The Royal Bank of Canada

*(Insert name of chartered lending institution whose prime rate is to be used)*

for prime business loans as it may change from time to time.

- .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, from the date the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.

#### ARTICLE A-6 COMMUNICATION

6.1 Except for the direct communications described in paragraph 6.2 of this Article, all communications between the *Trade Contractor*, and the *Owner*, the *Consultant* or the *Payment Certifier* that relate to the *Contract* shall be forwarded through the *Construction Manager*.

6.2 The parties shall inform the *Construction Manager* of the following direct communications:

- .1 between the *Payment Certifier* and the *Owner*, *Consultant* or *Trade Contractor* as described in Part 5 of the General Conditions – PAYMENT;
- .2 among the *Owner*, *Consultant* and *Trade Contractor* with respect to *Notices in Writing*; and
- .3 as otherwise expressly specified in the *Contract Documents*.

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**ARTICLE A-7 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING**

- 7.1 *Notices in Writing* will be addressed to the recipient at the address set out below.
- 7.2 The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.
- 7.3 A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working Day* next following such day.
- 7.4 A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission thereof.
- 7.5 An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

**Owner**

MOD Developments (197 Yonge) Limited Partnership

*name of Owner\**

MOD Developments Inc.  
8 Price Street, 4th Floor  
Toronto, ON M4W 1Z4

*address*

(647) 748-2822

*facsimile number*

nialani@moddevelopments.com

*email address*

**Trade Contractor**

Forma-Con Construction ( A DIVISION OF 1428502 ONTARIO LIMITED)

*name of Trade Contractor\**

407 Basaltic Road,  
Concord, ON L4K 4W8

*address*

(905) 303-8010

*facsimile number*

michaelsolano@forma-con.com

*email address*

**Construction Manager**

Tucker HiRise Construction Inc.

*name of Construction Manager\**

3755 Victoria Park Ave.  
Toronto, ON, M1W 3Z4

*address*

(416) 744-2700

*facsimile number*

chris.mallinos@tuckerhirise.com

*email address*

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Consultant

Hariri Pontarini Architects

name of Consultant \*

602 King Street West  
Toronto, ON, M5V 1M6

address

(416) 929-8924  
facsimile number

pyapur@hp-arch.com  
email address

\* If it is intended that a specific individual must receive the notice, that individual's name shall be indicated.

ARTICLE A-8 LANGUAGE OF THE CONTRACT

8.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English / ~~French~~\* language shall prevail.

\* Complete this statement by striking out inapplicable term.

8.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

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**ARTICLE A-9 SUCCESSION**

9.1 The *Contract* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

In witness whereof the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

**SIGNED AND DELIVERED**

In the presence of:

**WITNESS**

*signature of witness*

*name of person signing*

*signature of witness*

*name of person signing*

**WITNESS**

*signature of witness*

*name of person signing*

*signature of witness*

*name of person signing*

**OWNER**

**MOD Developments (197 Yonge) Limited Partnership**

*name of Owner*

*signature*

**Noorez Lalani, Vice President**

*name and title of person signing*

*signature*

**Gary Switzer, President**

*name and title of person signing*

**TRADE CONTRACTOR**

**Forma-Con Construction ( A DIVISION OF 1428502 ONTARIO LIMITED)**

*name of Trade Contractor*

*signature*

**Michael Solano, President**

*name and title of person signing*

*signature*

*name and title of person signing*

N.B. Where legal jurisdiction, local practice or Owner or Trade Contractor requirement calls for  
(a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or  
(b) the affixing of a corporate seal, this Agreement should be properly sealed

## DEFINITIONS

The following Definitions shall apply to all *Contract Documents*. References in the definition to the singular shall be considered to include the plural as the context requires.

### Change Directive

A *Change Directive* is a written instruction issued by the *Owner* through the *Construction Manager* and signed by the *Owner* directing the *Trade Contractor* to proceed with a change in the *Work* within the general scope of the *Contract Documents* prior to the *Owner* and the *Trade Contractor* agreeing upon adjustments in the *Contract Price* and the *Contract Time*.

### Change Order

A *Change Order* is a written amendment to the *Contract* issued by the *Construction Manager* and signed by the *Owner* and the *Trade Contractor* stating their agreement upon:

- a change in the *Work*;
- the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
- the extent of the adjustment in the *Contract Time*, if any.

### Construction Equipment

*Construction Equipment* means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the *Work* but is not incorporated into the *Work*.

### Construction Manager

The *Construction Manager* is the person or entity engaged by the *Owner* and identified as such in the Agreement.

### Consultant

The *Consultant* is the person or entity engaged by the *Owner* and identified as such in the Agreement. The *Consultant* is the Architect, the Engineer or entity licensed to practise in the province or territory of the *Place of the Project*.

### Contract

The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.

### Contract Documents

The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon between the parties.

### Contract Price

The *Contract Price* is the amount stipulated in Article A-4 of the Agreement – CONTRACT PRICE.

### Contract Time

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE WORK from commencement of the *Work* to *Substantial Performance of the Work*.

### Drawings

The *Drawings* are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location and dimensions of the *Work*, generally including plans, elevations, sections, details, and diagrams.

### Notice in Writing

A *Notice in Writing*, where identified in the *Contract Documents*, is a written communication between the parties or between them and the *Construction Manager* or the *Consultant* that is transmitted in accordance with the provisions of Article A-7 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

### Owner

The *Owner* is the person or entity identified as such in the Agreement.

### Payment Certifier

The *Payment Certifier* is either the *Construction Manager* or the *Consultant* identified as such in the Agreement.

### Place of the Project

The *Place of the Project* is the designated site or location of the *Project* identified in the *Contract Documents*.

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**Product**

*Product* means material, machinery, equipment, and fixtures incorporated into the *Work*, but does not include *Construction Equipment*.

**Project**

The *Project* means the total construction contemplated of which the *Work* may be the whole or a part.

**Project In-Use Date**

*Project In-Use Date* shall have been reached when the *Project* is ready for use or is being used for the purpose intended and is so confirmed in writing by the *Construction Manager* in consultation with the *Consultant* and the *Owner*.

**Provide**

*Provide* means to supply and install.

**Shop Drawings**

*Shop Drawings* are drawings, diagrams, illustrations, schedules, performance charts, brochures, *Product* data, and other data which the *Trade Contractor* provides to illustrate details of portions of the *Work*.

**Specifications**

The *Specifications* are that portion of the *Contract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, quality, and the services necessary for the performance of the *Work*.

**Substantial Performance of the Work**

*Substantial Performance of the Work* is as defined in the lien legislation applicable to the *Place of the Project*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Payment Certifier*.

**Supplemental Instruction**

A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Construction Manager* to supplement the *Contract Documents* as required for the performance of the *Work*.

**Supplier**

A *Supplier* is a person or entity having a direct contract with the *Trade Contractor* to supply *Products*.

**Temporary Work**

*Temporary Work* means temporary supports, structures, facilities, services, and other temporary items, excluding *Construction Equipment*, required for the execution of the *Work* but not incorporated into the *Work*.

**Trade Contractor**

The *Trade Contractor* is the person or entity identified as such in the Agreement.

**Trade Subcontractor**

A *Trade Subcontractor* is a person or entity having a direct contract with the *Trade Contractor* to perform a part or parts of the *Work* at the *Place of the Project*.

**Value Added Taxes**

*Value Added Taxes* means such sum as shall be levied upon the *Contract Price* by the Federal or any Provincial or Territorial Government and is computed as a percentage of the *Contract Price* and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the *Trade Contractor* by tax legislation.

**Work**

The *Work* means the total construction and related services required by the *Contract Documents*.

**Working Day**

*Working Day* means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the *Place of the Project*.

## GENERAL CONDITIONS OF THE CONTRACT

### PART 1 GENERAL PROVISIONS

#### GC 1.1 CONTRACT DOCUMENTS

- 1.1.1 The intent of the *Contract Documents* is to include the labour, *Products*, and services necessary for the performance of the *Work* by the *Trade Contractor* in accordance with these documents. It is not intended, however, that the *Trade Contractor* shall supply products or perform work not consistent with, not covered by, or not properly inferable from the *Contract Documents*.
- 1.1.2 Nothing contained in the *Contract Documents* shall create any contractual relationship between:
- .1 the *Owner* and a *Trade Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any of the *Work* ;
  - .2 the *Construction Manager* and the *Trade Contractor*, a *Trade Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any portion of the *Work*; or
  - .3 the *Consultant* and the *Trade Contractor*, a *Trade Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any portion of the *Work*.
- 1.1.3 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.5 Neither the organization of the *Specifications* nor the arrangement of *Drawings* shall control the *Trade Contractor* in dividing the work among *Trade Subcontractors* and *Suppliers*.
- 1.1.6 If there is a conflict within the *Contract Documents*:
- .1 the order of priority of documents, from highest to lowest, shall be
    - the Agreement between the *Owner* and *Trade Contractor*,
    - the Definitions,
    - Supplementary Conditions,
    - the General Conditions of the *Contract*,
    - Division 1 of the *Specifications*,
    - technical *Specifications*,
    - material and finishing schedules,
    - the *Drawings*.
  - .2 *Drawings* of larger scale shall govern over those of smaller scale of the same date.
  - .3 dimensions shown on *Drawings* shall govern over dimensions scaled from *Drawings*.
  - .4 later dated documents shall govern over earlier documents of the same type.
  - .5 noted materials and annotations shall govern over graphic indications.
- 1.1.7 The *Owner* shall provide the *Trade Contractor*, without charge, sufficient copies of the *Contract Documents* to perform the *Work*.
- 1.1.8 *Specifications*, *Drawings*, models, and copies thereof furnished by the *Consultant* are and shall remain the *Consultant's* property. Signed *Contract* sets shall belong to each party to the *Contract*. All *Specifications*, *Drawings* and models prepared by the *Consultant* and issued to the *Trade Contractor* are to be used only with respect to the *Work* and are not to be used on other work. These *Specifications*, *Drawings* and models are not to be copied or altered in any manner without the written authorization of the *Consultant*.
- 1.1.9 Models furnished by the *Trade Contractor* at the *Owner's* expense are the property of the *Owner*.

#### GC 1.2 LAW OF THE CONTRACT

- 1.2.1 The law of the *Place of the Project* shall govern the interpretation of the *Contract*.

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**GC 1.3 RIGHTS AND REMEDIES**

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
- 1.3.2 No action or failure to act by the *Owner*, *Construction Manager*, *Consultant*, *Payment Certifier*, or *Trade Contractor* shall constitute a waiver of any right or duty afforded any of them under the *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**GC 1.4 ASSIGNMENT**

- 1.4.1 Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

**PART 2 ADMINISTRATION OF THE CONTRACT****GC 2.1 AUTHORITY OF THE CONSTRUCTION MANAGER AND THE CONSULTANT**

- 2.1.1 The *Construction Manager* and the *Consultant* will have authority to act on behalf of the *Owner* only to the extent provided in the *Contract Documents*, unless otherwise modified by written agreement as provided in paragraph 2.1.2.
- 2.1.2 The duties, responsibilities and limitations of authority of the *Construction Manager* and the *Consultant* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner* and the *Trade Contractor*.
- 2.1.3 If the employment of the *Construction Manager* or the *Consultant* is terminated, the *Owner* shall immediately appoint or reappoint those against whom the *Trade Contractor* makes no reasonable objection and whose duties, responsibilities and limitations of authority under the *Contract Documents* will be that of the former *Construction Manager* or the former *Consultant*, as the case may be.
- 2.1.4 If the employment of the *Construction Manager* or the *Consultant* as the *Payment Certifier* is terminated, the *Owner* shall immediately appoint or reappoint the *Construction Manager* or the *Consultant* as the *Payment Certifier*.

**GC 2.2 ROLES OF THE CONSTRUCTION MANAGER AND THE CONSULTANT****2.2.1 The *Construction Manager* will:**

- .1 provide administration of the *Contract* as described in the *Contract Documents*;
- .2 in the first instance, receive all questions in writing by the *Owner* or the *Trade Contractor* for interpretations and findings relating to the performance of the *Work* or the interpretation of the *Contract Documents* except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER;
- .3 in the first instance, give interpretations and make findings on matters in question relating to the performance of the *Work* or the requirements of the *Contract Documents*, except with respect to any and all architectural and engineering aspects of the *Work* or GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER; and
- .4 during the progress of the *Work*, issue *Supplemental Instructions* to the *Trade Contractor* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Construction Manager* and the *Trade Contractor*.

**2.2.2 The *Consultant* will:**

- .1 visit the *Place of the Project* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the *Work* and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*; and
- .2 in the first instance, give interpretations and make findings on matters in question relating to the requirements of the design.

**2.2.3 The *Construction Manager* and the *Consultant* will:**

- .1 have authority to reject work which in their opinion does not conform to the requirements of the *Contract Documents* and whenever it is considered necessary or advisable, require inspection or testing of work, whether or not such work is fabricated, installed or completed. However, neither the authority of the *Construction Manager* or the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Construction Manager* or the *Consultant* to the *Trade Contractor*, *Trade Subcontractors*, *Suppliers*, or their agents, employees, or other persons performing any of the *Work*; and

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- 4 on expiry of the warranty period, charge the *Trade Contractor* the amount by which the cost of corrections to the *Trade Contractor's* work under GC 12.3 – WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Trade Contractor* the difference.

7.1.6 The *Trade Contractor's* obligation under the *Contract* as to quality, correction and warranty of the work performed by the *Trade Contractor* up to the time of termination shall continue in force after such termination of the *Contract*.

#### GC 7.2 TRADE CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

- 7.2.1 If the *Owner* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner's* insolvency, or if a receiver is appointed because of the *Owner's* insolvency, the *Trade Contractor* may, without prejudice to any other right or remedy the *Trade Contractor* may have, terminate the *Contract* by giving the *Owner* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.2.2 If the *Work* should be suspended or otherwise delayed for a period of 20 *Working Days* or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Trade Contractor* or of anyone directly or indirectly employed or engaged by the *Trade Contractor*, the *Trade Contractor* may, without prejudice to any other right or remedy the *Trade Contractor* may have, terminate the *Contract* by giving the *Owner* *Notice in Writing* to that effect.
- 7.2.3 The *Trade Contractor* may give *Notice in Writing* to the *Owner*, with a copy to the *Construction Manager* and the *Consultant*, that the *Owner* is in default of the *Owner's* contractual obligations if:
- 1 the *Owner* fails to furnish, when so requested by the *Trade Contractor*, reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*, or
  - 2 the *Payment Certifier* fails to issue a certificate as provided in Part 5 of the General Conditions – PAYMENT, or
  - 3 the *Owner* fails to pay the *Trade Contractor* when due the amounts certified by the *Payment Certifier* or awarded by arbitration or court, or
  - 4 the *Owner* violates the requirements of the *Contract* to a substantial degree and the *Construction Manager*, except for GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, confirms by written statement to the *Trade Contractor* that sufficient cause exists.
- 7.2.4 The *Trade Contractor's* *Notice in Writing* to the *Owner* provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 *Working Days* following the receipt of the *Notice in Writing*, the *Trade Contractor* may, without prejudice to any other right or remedy the *Trade Contractor* may have, suspend the *Work* or terminate the *Contract*.
- 7.2.5 If the *Trade Contractor* terminates the *Contract* under the conditions set out above, the *Trade Contractor* shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Trade Contractor* may have sustained as a result of the termination of the *Contract*.

### PART 8 DISPUTE RESOLUTION

#### GC 8.1 AUTHORITY OF THE CONSTRUCTION MANAGER AND THE CONSULTANT

- 8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by findings of the *Construction Manager* or the *Consultant* as provided in GC 2.2 – ROLE OF THE CONSTRUCTION MANAGER AND THE CONSULTANT, shall be settled in accordance with the requirements of Part 8 of the General Conditions – DISPUTE RESOLUTION.
- 8.1.2 If a dispute arises under the *Contract* in respect of a matter in which neither the *Construction Manager* nor the *Consultant* have authority under the *Contract* to make a finding, the procedures set out in paragraph 8.1.3 and paragraphs 8.2.3 to 8.2.8 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION, and in GC 8.3 – RETENTION OF RIGHTS apply to that dispute with the necessary changes to detail as may be required.
- 8.1.3 If a dispute is not resolved promptly, the *Construction Manager* will give such instructions as in the *Construction Manager's* opinion are necessary for the proper performance of the *Work* and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay the *Trade Contractor* costs incurred by the *Trade Contractor* in carrying out such instructions which the *Trade Contractor* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Work*.

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## GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

- 8.2.1 In accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing, the parties shall appoint a Project Mediator
- .1 within 20 *Working Days* after the *Contract* was awarded, or
  - .2 if the parties neglected to make an appointment within the 20 *Working Days*, within 10 *Working Days* after either party by *Notice in Writing* requests that the Project Mediator be appointed.
- 8.2.2 A party shall be conclusively deemed to have accepted a finding of the *Construction Manager* or the *Consultant* under GC 2.2 - ROLES OF THE CONSTRUCTION MANAGER AND THE CONSULTANT and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 *Working Days* after receipt of that finding, the party sends a *Notice in Writing* of dispute to the other party, the *Construction Manager* and the *Consultant*, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract Documents*. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing* setting out particulars of this response and any relevant provisions of the *Contract Documents*.
- 8.2.3 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.2.4 After a period of 10 *Working Days* following receipt of a responding party's *Notice in Writing* of reply under paragraph 8.2.2, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing.
- 8.2.5 If the dispute has not been resolved within 10 *Working Days* after the Project Mediator was requested under paragraph 8.2.4 or within such further period agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving *Notice in Writing* to the *Owner*, the *Trade Contractor* and the *Construction Manager*.
- 8.2.6 By giving a *Notice in Writing* to the other party and the *Construction Manager*, not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may refer the dispute to be finally resolved by arbitration under the latest edition of the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing. The arbitration shall be conducted in the jurisdiction of the *Place of the Project*.
- 8.2.7 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 8.2.6 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.2.6 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.
- 8.2.8 If neither party, by *Notice in Writing*, given within 10 *Working Days* of the date of *Notice in Writing* requesting arbitration in paragraph 8.2.6, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.2.6 shall be
- .1 held in abeyance until
    - (1) *Substantial Performance of the Work*,
    - (2) the *Contract* has been terminated, or
    - (3) the *Trade Contractor* has abandoned the *Work*,
 whichever is earlier, and
  - .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.2.6.

## GC 8.3 RETENTION OF RIGHTS

- 8.3.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notice in Writing* required under Part 8 of the General Conditions – DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.3 of GC 8.1 – AUTHORITY OF THE CONSTRUCTION MANAGER AND THE CONSULTANT.
- 8.3.2 Nothing in Part 8 of the General Conditions – DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Project* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.2.6 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

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## PART 9 PROTECTION OF PERSONS AND PROPERTY

### GC 9.1 PROTECTION OF WORK AND PROPERTY

- 9.1.1 The *Trade Contractor* shall protect the *Project* and the *Owner's* property and property adjacent to the *Place of the Project* from damage which may arise as the result of the *Trade Contractor's* operations under the *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Contract Documents*; or
  - .2 acts or omissions by the *Owner*, the *Construction Manager*, the *Consultant*, other contractors, their agents and employees.
- 9.1.2 Before commencing any *Work*, the *Trade Contractor* shall determine the location of all underground utilities and structures indicated in the *Contract Documents* or that are reasonably apparent in an inspection of the *Place of the Project*.
- 9.1.3 Should the *Trade Contractor* in the performance of the *Contract* damage the *Project*, the *Owner's* property or property adjacent to the *Place of the Project*, the *Trade Contractor* shall be responsible for making good of such damage at the *Trade Contractor's* expense.
- 9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Trade Contractor* is not responsible, as provided in paragraph 9.1.1, the *Trade Contractor* shall make good such damage to the *Work* and, if the *Construction Manager* so directs, to the *Owner's* property. The *Contract Price* and *Contract Time* shall be adjusted as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER, and GC 6.3 – CHANGE DIRECTIVE.

### GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- 9.2.1 For the purposes of applicable legislation related to toxic and hazardous substances, the *Owner* shall be deemed to have control and management of the *Place of the Project* with respect to existing conditions.
- 9.2.2 Prior to the *Trade Contractor* commencing the *Work*, the *Owner* shall,
- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Project*, and
  - .2 provide the *Construction Manager*, the *Consultant* and the *Trade Contractor* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substance exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Project* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Project* prior to the *Trade Contractor* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Project*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Project* prior to the *Trade Contractor* commencing the *Work*.
- 9.2.5 If the *Trade Contractor*
- .1 encounters toxic or hazardous substances at the *Place of the Project*, or
  - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Project*, which were not brought to the *Place of the Project* by the *Trade Contractor* or anyone for whom the *Trade Contractor* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Trade Contractor* shall
  - .3 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substance exceeds any applicable time weighted levels prescribed by applicable legislation at the *Place of the Project*, and
  - .4 immediately report the circumstances to the *Construction Manager*, the *Owner* and the *Consultant* in writing.
- 9.2.6 If the *Owner* and *Trade Contractor* do not agree on the existence, significance of, or whether the toxic or hazardous substances were brought onto the *Place of the Project* by the *Trade Contractor* or anyone for whom the *Trade Contractor* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner*, the *Trade Contractor* and the *Construction Manager*.

- 9.2.7 If the *Owner* and *Trade Contractor* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the *Place of the Project* by the *Trade Contractor* or anyone for whom the *Trade Contractor* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
- .1 take all steps as required under paragraph 9.2.4;
  - .2 reimburse the *Trade Contractor* for the costs of all steps taken pursuant to paragraph 9.2.5;
  - .3 extend the *Contract Time* for such reasonable time as the *Construction Manager* may recommend in consultation with the *Owner*, the *Trade Contractor* and the expert referred to in 9.2.6 and reimburse the *Trade Contractor* for reasonable costs incurred as a result of the delay; and
  - .4 indemnify the *Trade Contractor* as required by paragraph GC 12.1 – INDEMNIFICATION
- 9.2.8 If the *Owner* and *Trade Contractor* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the *Place of the Project* by the *Trade Contractor* or anyone for whom the *Trade Contractor* is responsible, the *Trade Contractor* shall promptly at the *Trade Contractor's* own expense:
- .1 take all necessary steps in accordance with applicable legislation in force at the *Place of the Project*, to safely remove and dispose the toxic or hazardous substances;
  - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Project* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
  - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
  - .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.
- 9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

### GC 9.3 ARTIFACTS AND FOSSILS

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place of the Project* shall, as between the *Owner* and the *Trade Contractor*, be deemed to be the absolute property of the *Owner*.
- 9.3.2 The *Trade Contractor* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Construction Manager* upon discovery of such items.
- 9.3.3 The *Construction Manager* will investigate the impact on the *Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Trade Contractor's* cost or time to perform the *Work*, the *Owner*, through the *Construction Manager*, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

### GC 9.4 CONSTRUCTION SAFETY

- 9.4.1 The *Trade Contractor* shall:
- .1 be responsible for construction health and safety relating to the *Work* at the *Place of the Project* in compliance with the rules, regulations and practices required by the applicable construction health and safety legislation;
  - .2 be responsible for establishing, initiating, maintaining, and supervising all health and safety precautions and programs in connection with the performance of the *Work*; and
  - .3 comply with all health and safety precautions and programs established at the *Place of the Project*.
- 9.4.2 The *Owner* shall be responsible for construction health and safety at the *Place of the Project* in compliance with the rules, regulations and practices required by the applicable construction health and safety legislation.
- 9.4.3 The *Construction Manager* will:
- .1 establish, initiate, maintain, and supervise the health and safety precautions and programs required to be put in place at the *Place of the Project*; and
  - .2 review with the *Owner* the *Trade Contractor's* health and safety program for compliance.

## GC 9.5 MOULD

- 9.5.1 If the *Trade Contractor*, the *Construction Manager*, the *Consultant*, or the *Owner* observes or reasonably suspects the presence of mould at the *Place of the Project*, the remediation of which is not expressly part of the *Work*,
- .1 the observing party shall promptly report the circumstances to the other parties in writing, and
  - .2 the *Trade Contractor* shall promptly take all reasonable steps, including stopping the *Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould, and
  - .3 if the *Owner* and the *Trade Contractor* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Trade Contractor*.
- 9.5.2 If the *Owner* and the *Trade Contractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the *Trade Contractor's* operations under the *Contract*, the *Trade Contractor* shall promptly, at the *Trade Contractor's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
  - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Project* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
  - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.5.1.3, and
  - .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.
- 9.5.3 If the *Owner* and *Trade Contractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the *Trade Contractor's* operations under the *Contract*, the *Owner* shall promptly, at the *Owner's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
  - .2 reimburse the *Trade Contractor* for the cost of taking the steps under paragraph 9.5.1.2 and making good any damage to the *Work* as provided in paragraph 9.1.4 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
  - .3 extend the *Contract Time* for such reasonable time as the *Construction Manager* may recommend in consultation with the *Trade Contractor* and the expert referred to in paragraph 9.5.1.3 and reimburse the *Trade Contractor* for reasonable costs incurred as a result of the delay, and
  - .4 indemnify the *Trade Contractor* as required by GC 12.1 – INDEMNIFICATION.
- 9.5.4 If either party does not accept the expert's finding under paragraph 9.5.1.3, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION: If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.2 or 9.5.3, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided by GC 9.5 – MOULD.

## PART 10 GOVERNING REGULATIONS

### GC 10.1 TAXES AND DUTIES

- 10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the bid closing except for *Value Added Taxes* payable by the *Owner* to the *Trade Contractor* as stipulated in Article A-4 of the Agreement – CONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the *Trade Contractor* due to changes in such included taxes and duties after the time of the bid closing shall increase or decrease the *Contract Price* accordingly.

### GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Project* shall govern the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or for which the *Contract Documents* specify as the responsibility of the *Trade Contractor*.
- 10.2.3 The *Trade Contractor* shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the *Work* and customarily obtained by contractors in the jurisdiction of the *Place of the Project* after the issuance of the building permit. The *Contract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.

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- 10.2.4 The *Trade Contractor* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety.
- 10.2.5 The *Trade Contractor* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Trade Contractor* shall notify the *Construction Manager* in writing requesting direction immediately upon such variance or change becoming known. The *Owner*, through the *Construction Manager*, will issue the changes required to the *Contract Documents* as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 10.2.6 If the *Trade Contractor* fails to advise the *Construction Manager* in writing, fails to obtain direction as required in paragraph 10.2.5, and performs work knowing it to be contrary to any laws, ordinances, rules, regulations or codes, the *Trade Contractor* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.
- 10.2.7 If, subsequent to the time of bid closing, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the *Work*, either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

### GC 10.3 PATENT FEES

- 10.3.1 The *Trade Contractor* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The *Trade Contractor* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Trade Contractor*’s performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Trade Contractor* or anyone for whose acts the *Trade Contractor* may be liable.
- 10.3.2 The *Owner* shall hold the *Trade Contractor* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Trade Contractor*’s performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, or any model, plan or design which was supplied to the *Trade Contractor* as part of the *Contract*.

### GC 10.4 WORKERS’ COMPENSATION

- 10.4.1 Prior to commencing the *Work*, and again with the *Trade Contractor*’s application for payment of the holdback amount following *Substantial Performance of the Work*, and again with the *Contractor*’s application for final payment, the *Trade Contractor* shall provide evidence of compliance with workers’ compensation legislation at the *Place of the Project*, including payments due thereunder.
- 10.4.2 At any time during the term of the *Contract*, when requested by the *Construction Manager*, the *Trade Contractor* shall provide such evidence of compliance with workers’ compensation legislation at the *Place of the Project* by the *Trade Contractor* and any *Trade Subcontractors*.

## PART 11 INSURANCE AND CONTRACT SECURITY

### GC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of GC 12.1 – INDEMNIFICATION, the *Trade Contractor* shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 – INSURANCE REQUIREMENTS in effect at the time of bid closing except as hereinafter provided:
- .1 Automobile Liability Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*;
  - .2 Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the *Work*; and
  - .3 Contractors’ Equipment Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*.

- 11.1.2 If the *Trade Contractor* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence to the *Trade Contractor*, the *Construction Manager* and the *Consultant*. The *Trade Contractor* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the cost from any amount which is due or may become due to the *Trade Contractor*.
- 11.1.3 The *Owner* shall obtain, maintain and pay for 'wrap-up' general liability insurance in the joint names of the *Owner*, the *Construction Manager*, the *Consultant* and the *Trade Contractor* with limits of not less than \$10,000,000 per occurrence and a deductible not more than \$10,000. The insurance coverage shall be primary to all other insurance policies and shall not be substantially less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320, except for liability arising from damage to the *Project* during construction, which shall be limited to the completed operations period. The insurance shall be maintained from the date of commencement of the *Project* until 90 calendar days after the *Project In-Use Date*. The *Owner* is responsible to provide coverage for completed operations hazards from the *Project In-Use Date* for a period of 2 year. The *Trade Contractor* shall then provide, maintain and pay for liability insurance coverage for completed operations hazards with limits of not less than \$5,000,000 per occurrence and a deductible not more than \$5,000 on an ongoing basis for a further period of 4 years.
- 11.1.4 The *Owner* shall provide, maintain and pay for the following insurance coverages:
- 1 "Broad form" property insurance in the joint names of the *Owner*, the *Trade Contractor*, the *Construction Manager*, and the *Consultant*. The policy shall have limits of not less than the sum of 1.1 times *Contract Price*, and the full value, as stated in the *Contract*, of products and design services that are specified to be provided by the *Owner* for incorporation into the *Work*, with a deductible not exceeding \$10,000. The insurance coverage shall not be less than the insurance provided by the latest edition of IBC Forms 4042 and 4047 or their equivalent replacement. In addition to the exclusions identified in the latest edition of IBC forms 4042 and 4047, the *Owner* is not required to provide insurance coverage for Asbestos, Cyber Risk, Mould, or Terrorism. The "Broad form" property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
    - (1) 10 calendar days after the date of *Substantial Performance of the Work*;
    - (2) on the commencement of use or occupancy of any part or section of *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*;
    - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
  - 2 Boiler and machinery insurance in the joint names of the *Owner*, the *Trade Contractor*, the *Construction Manager*, and the *Consultant*. The insurance shall have limits of not less than the replacement value of the permanent or temporary boilers and pressure vessels, and other insurable objects forming part of the *Work*. The insurance coverage shall not be less than the insurance provided by a comprehensive boiler and machinery policy. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Substantial Performance of the Work*.
  - 3 The "Broad form" property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner*, the *Trade Contractor*, the *Construction Manager*, and the *Consultant* as their respective interests may appear. In the event of loss or damage:
    - (1) the *Construction Manager* shall act on behalf of the *Owner*, the *Trade Contractor* and the *Consultant* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Trade Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Trade Contractor* shall be entitled to such reasonable extension of *Contract Time* relative to the extent of the loss or damage as the *Construction Manager* may recommend in consultation with the *Trade Contractor*;
    - (2) the *Trade Contractor* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions. In addition the *Trade Contractor* shall be entitled to receive from the payments made by the insurer the amount of the *Trade Contractor's* interest in the restoration of the *Work*; and
    - (3) to the *Work* arising from the work of the *Owner*, the *Owner's* own forces or another contractor, in accordance with the *Owner's* obligations under the provisions relating to construction by *Owner* or other contractors, shall pay the *Trade Contractor* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions.

- 11.1.5 Prior to commencement of the *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance,
- .1 the *Trade Contractor* shall promptly provide the *Construction Manager* with confirmation of coverage under the policies specified in paragraph 11.1.1 and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Work*; and
  - .2 the *Owner*, through the *Construction Manager*, shall promptly provide the *Trade Contractor* with confirmation of coverage under the policies specified in paragraphs 11.1.3 and 11.1.4 and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Work*.
- 11.1.6 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the *Contract*.
- 11.1.7 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Project*.
- 11.1.8 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the insurance policy becoming due for renewal, and record any agreement in a *Change Order*.
- 11.1.9 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, either party may request the increased coverage by way of a *Change Order*.
- 11.1.10 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to the revision of CCDC 41 – INSURANCE REQUIREMENTS.

#### GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Trade Contractor* shall, prior to commencement of the *Work* or within the specified time, provide to the *Construction Manager* any *Contract* security specified in the *Contract Documents*.
- 11.2.2 If the *Contract Documents* require surety bonds to be provided, such bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the *Place of the Project* and shall be maintained in good standing until the fulfillment of the *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

### PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

#### GC 12.1 INDEMNIFICATION

- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Owner* and the *Trade Contractor* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to, their involvement as parties to this *Contract*, provided such claims are:
- .1 caused by:
    - (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
    - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and
  - .2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.4.2.2 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Project*.
- The parties expressly waive the right to indemnify for claims other than those provided for in this *Contract*.
- 12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:
- .1 In respect to losses suffered by the *Owner* and the *Trade Contractor* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the insurance limit for the loss so covered in effect at the time of bid closing.
  - .2 In respect to losses suffered by the *Owner* and the *Trade Contractor* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 – CONTRACT PRICE or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.

- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.
- 12.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.
- 12.1.4 The *Owner* and the *Trade Contractor* shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.
- 12.1.5 The *Owner* shall indemnify and hold harmless the *Trade Contractor* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:
- .1 as described in paragraph 10.3.2 of GC 10.3 – PATENT FEES, and
  - .2 arising out of the *Trade Contractor's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Project*.
- 12.1.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Trade Contractor*:
- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known;
  - .2 should either party be required, as a result of its obligation to indemnify the other, pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

#### GC 12.2 WAIVER OF CLAIMS

- 12.2.1 Subject to any lien legislation applicable to the *Place of the Project*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*, the *Trade Contractor* waives and releases the *Owner* from all claims which the *Trade Contractor* has or reasonably ought to have knowledge of that could be advanced by the *Trade Contractor* against the *Owner* arising from the *Trade Contractor's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Owner* from the *Trade Contractor* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*;
  - .2 indemnification for claims advanced against the *Trade Contractor* by third parties for which a right of indemnification may be asserted by the *Trade Contractor* against the *Owner* pursuant to the provisions of this *Contract*;
  - .3 claims for which a right of indemnity could be asserted by the *Trade Contractor* pursuant to the provisions of paragraphs 12.1.4 or 12.1.5 of GC 12.1 – INDEMNIFICATION; and
  - .4 claims resulting from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.2 The *Trade Contractor* waives and releases the *Owner* from all claims referenced in paragraph 12.2.1.4 except for those referred in paragraphs 12.2.1.2 and 12.2.1.3 and claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Trade Contractor* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.3 Subject to any lien legislation applicable to the *Place of the Project*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*, the *Owner* waives and releases the *Trade Contractor* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Trade Contractor* arising from the *Owner's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Trade Contractor* from the *Owner* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*;
  - .2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Trade Contractor* pursuant to the provisions of this *Contract*;

- .3 claims for which a right of indemnity could be asserted by the *Owner* against the *Trade Contractor* pursuant to the provisions of paragraph 12.1.4 of GC 12.1 – INDEMNIFICATION;
  - .4 damages arising from the *Trade Contractor's* actions which result in substantial defects or deficiencies in the *Work*. "Substantial defects or deficiencies" mean those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*;
  - .5 claims arising pursuant to GC 12.3 – WARRANTY; and
  - .6 claims arising from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.4 The *Owner* waives and releases the *Trade Contractor* from all claims referred to in paragraph 12.2.3.4 except claims for which *Notice in Writing* of claim has been received by the *Trade Contractor* from the *Owner* within a period of six years from the date of *Substantial Performance of the Work* should any limitation statute of the Province or Territory of the *Place of the Project* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:
- .1 any limitation statute of the Province or Territory of the *Place of the Project*; or
  - .2 the Civil Code of Quebec, if the *Place of the Project* is the Province of Quebec.
- 12.2.5 The *Owner* waives and releases the *Trade Contractor* from all claims referenced in paragraph 12.2.3.6 except for those referred in paragraph 12.2.3.2, 12.2.3.3 and those arising under GC 12.3 – WARRANTY and claims for which *Notice in Writing* has been received by the *Trade Contractor* from the *Owner* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.6 *Notice in Writing* of claim as provided for in GC 12.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 12.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- .1 a clear and unequivocal statement of the intention to claim;
  - .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
  - .3 a statement of the estimated quantum of the claim.
- 12.2.7 The party giving *Notice in Writing* of claim as provided for in GC 12.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 12.2.8 Where the event or series of events giving rise to a claim made under paragraphs 12.2.1 or 12.2.3 has a continuing effect, the detailed account submitted under paragraph 12.2.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 12.2.9 If a *Notice in Writing* of claim pursuant to paragraph 12.2.1.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.3.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*.
- 12.2.10 If a *Notice in Writing* of claim pursuant to paragraph 12.2.3.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.1.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*.

### GC 12.3 WARRANTY

- 12.3.1 Except for extended warranties as described in paragraph 12.3.7, the warranty period under the *Contract* is one year from the later of the date of *Substantial Performance of the Work* and the *Project In-Use Date*.
- 12.3.2 The *Trade Contractor* shall be responsible for the proper performance of the *Work* to the extent that the design and *Contract Documents* permit such performance.
- 12.3.3 The *Trade Contractor* shall submit to the *Construction Manager* for the *Owner's* acceptance all written warranties and related documents required by the *Contract Documents*.
- 12.3.4 The *Owner*, through the *Construction Manager*, shall promptly give the *Trade Contractor Notice in Writing* of observed defects and deficiencies that occur during the one year warranty period.

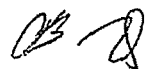
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- 12.3.5 Subject to paragraph 12.3.2, the *Trade Contractor* shall correct promptly, at the *Trade Contractor's* expense, defects or deficiencies in the *Work* which appear prior to and during the one year warranty period.
- 12.3.6 The *Trade Contractor* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.5.
- 12.3.7 Any extended warranties beyond the one year warranty period as described in paragraph 12.3.1, shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Trade Contractor's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.



## SUPPLEMENTARY CONDITIONS

The Standard Construction Document for Stipulated Price Contract between *Owner* and *Trade Contractor* for Construction Management Projects form CCDC 17, 2010, English version, consisting of the Agreement Between *Owner* and *Trade Contractor*, Definitions, and General Conditions of the Contract, Parts 1 to 12 inclusive, governing same is hereby made part of these *Contract Documents*, with the following amendments, additions and modifications. Where these amendments, additions, and modifications specifically reference a change to the Agreement, Definitions, or General Conditions, these amendments, additions and modifications shall govern.

### AGREEMENT

#### **SC1.1 Article A-1 The Work**

SC1.1.1 At the end of the last sentence of Article A-1 paragraph 1.1, delete the following: "for which the *Construction Manager* / *Consultant* is acting as the *Payment Certifier*, and (\*Strike out inapplicable term.)".

SC1.1.2 Delete Paragraphs 1.3.2 and 1.3.3 in their entirety.

#### **SC1.2 Article A-4 Contract Price**

SC1.2.1 At paragraph 4.1 delete, "The *Contract Price*, which excludes *Value Added Taxes*, is:" and replace with, "The *Contract Price* including taxes, duties, tariffs and royalties related to the performance of the *Work* and excluding *Value Added Taxes* is:"

#### **SC1.3 Article A-5 Payment**

SC1.3.1 Delete Paragraphs 5.1.1 and 5.1.3 in their entirety.

SC1.3.2 Add new paragraph 5.1.1 as follows:

"5.1.1 make progress payments to the *Trade Contractor* on account of the *Contract Price* when due in the amount approved by the *Owner* together with such *Value Added Taxes* as may be applicable to such payment, and

SC1.3.3 Add new paragraph 5.1.3 as follows:

"5.1.3 upon the completion of the *Work* as agreed by the *Construction Manager* and the *Consultant*, pay to the *Trade Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.

SC1.3.4 Delete paragraph 5.3.1(1) and 5.3.1(2) in their entirety.

SC1.3.5 Add new paragraph 5.3.1(1) as follows:

"5.3.1(1) 0% for the first 15 days.

SC1.3.6 Add new paragraph 5.3.1(2) as follows:

"5.3.1(2) 1% after the first 15 days.

SC1.3.7 At the end of paragraph 5.3.1 delete the following: "Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by (insert name of chartered lending institution whose prime rate is to be used) for prime business loans as it may change from time to time.

**SC1.4 Article A-6 Communication**

SC1.4.1 At paragraph 6.1 add, "or" before "the *Consultant*" and delete, "or the Payment Certifier".

SC1.4.2 At paragraph 6.2.1 delete, "the *Payment Certifier* and".

**DEFINITIONS**

**SC2.1 Payment Certifier**

SC2.1.1 Delete the definition for "Payment Certifier" in its entirety.

SC2.1.2 Add new definition for "Payment Certifier" as follows:  
 "A *Payment Certifier* has not been and will not be assigned to this Project."

**SC2.2 Project In Use Date**

SC2.2.1 Delete the definition for "Project In-Use Date" in its entirety.

SC2.2.2 Add new definition for "Project In-Use Date" as follows:  
 "*Project In-Use Date* shall have been reached when the Project is deemed Substantially Complete excluding any areas for which the design is not complete. The *Project In-Use Date* shall be confirmed in writing by the *Construction Manager* in consultation with the *Consultant* and the *Owner*."

**SC2.3 Quality Assurance**

SC2.3 Add new definition for "Quality Assurance" as follows:  
 "Quality Assurance is the process and procedures put in place to execute the *Work* that systematically monitors, detects, corrects and ensures that quality standards are being met."

**SC2.4 Quality Control**

SC2.4 Add new definition for "Quality Control" as follows:  
 "Quality Control is the process put in place to review the *Work* as it is being executed and completed to ensure that quality standards are being met."

**GENERAL CONDITIONS**

**SC3 Part 1 General Provisions**

SC3.1 At paragraph 1.3.2 delete, "*Payment Certifier*,"

**SC4 Part 2 Administration of the Contract**

SC4.1 Delete paragraph 2.1.4 in its entirety.

SC4.2 Add new paragraph 2.4.4 as follows:  
 "2.4.4 The *Trade Contractor* will be responsible for all additional testing and inspections related to the defective work and correction of same.

**SC5 Part 3 Execution of the Work**

- SC5.1 Add new paragraph 3.1.3 as follows:  
"3.1.3 This *Trade Contractor* shall secure the area of its work to ensure no hazard to other trades people, property, equipment or other work."
- SC5.2 Add new paragraph 3.1.4 as follows:  
"3.1.4 This *Trade Contractor* shall rectify immediately damage caused by this *Trade Contractor* to the work of others, temporary services and facilities, fencing, curbs, trees, sidewalks, roadways, equipment, property or neighboring properties."
- SC5.3 Add new paragraph 3.1.5 as follows:  
"3.1.5 This *Trade Contractor* will be responsible to protect the *Work* during the course of the construction."
- SC5.4 Add new paragraph 3.1.6 as follows:  
"3.1.6 Only major benchmarks and gridlines will be provided by the *Construction Manager*. All required extension of layout and grades to complete the *Work* are the responsibility of the *Trade Contractor*"
- SC5.5 Add to the end of 3.3.1, "When using construction equipment (including but not limited to swing stages), the *Trade Contractor* shall submit to the *Owner* a certificate indicating the initial set-up as well as any subsequent set-ups and the equipment used is in conformance with the Occupational Health and Safety Act and related regulations for a construction project."
- SC5.6 Add new paragraph 3.3.4 as follows:  
"3.3.4 This *Trade Contractor* shall be responsible for providing labour to load, off-load and move their own equipment and materials as needed to complete the *Work*."
- SC5.7 Add new paragraph 3.3.5 as follows:  
"3.3.5 A Man and Material Hoist will be provided by the *Owner* for use by all trade contractors working on the *Project*. The *Trade Contractor* will have use of the Man and Material Hoist as arranged through the *Construction Manager*. Deliveries will be allowed on a reserved basis coordinated by the *Construction Manager*. At times the hoist will be running beyond normal working hours to accommodate the need. The *Trade Contractor* will be expected to coordinate the delivery times with the *Construction Manager* and will not be compensated for premium time shifts if the deliveries are accepted or required outside normal working hours."
- SC5.8 Add new paragraph 3.3.6 as follows:  
"3.3.6 The *Trade Contractor* is responsible for its own hoisting. Should hoisting be required prior to the installation of the Man and Material Hoist or after the hoist is dismantled it will be the *Trade Contractors* responsibility to hoist its equipment and/or material using other means. The *Trade Contractor* is responsible to advise the *Construction Manager* of any special hoisting procedures."
- SC5.9 Add new paragraph 3.3.7 as follows  
"3.3.7 Should the *Trade Contractor* require the use of the Tower Crane during the timeframe that it is installed and operating on the *Project* then the *Trade Contractor* will make arrangements through the *Construction Manager* for such use. Use of the Tower Crane will be at the discretion of the formwork contractor who will provide the Tower Crane at times that will not interfere with the progress of their work. The *Trade Contractor* shall pay all costs and shall provide all insurance required for use of the Tower Crane. In the event the hoisting by the Tower Crane is outside normal working hours the *Trade Contractor* will not be compensated for premium time shifts."

- SC5.10 Add new paragraph 3.4.2 as follows:  
"3.4.2 The *Trade Contractor* is responsible for ensuring that it is working with the most current revision of all drawings."
- SC5.11 Add new paragraph 3.4.3 as follows:  
"3.4.3 The *Trade Contractor* is to coordinate the installation of its *Work* with all *Contracts Documents* (i.e. Architectural, Interior Design, Landscape, Structural, Mechanical and Electrical drawings and specifications) ensuring the installation of the *Work* will not adversely impact the installation of the work of other trades. Where a conflict is found, the *Trade Contractor* will advise the *Construction Manager* immediately and will not proceed with the installation of the *Work* until the conflict is resolved and direction is given through the *Construction Manager*. Should the *Trade Contractor* install portions of the *Work* that later prove to impede the work of other trades then the *Trade Contractor* will relocate the portions of the *Work* that are interfering at the *Trade Contractors* cost."
- SC5.12 At 3.5.3.2 delete, "monthly" and replace with, "weekly".
- SC5.13 Add new paragraph 3.5.3.4 as follows:  
"3.5.3.4 provide all necessary material, manpower, equipment, supervision and the like to complete the work as per the Project Schedule."
- SC5.14 Add new paragraph 3.5.3.5 as follows:  
"3.5.3.5 notify the *Construction Manager* within 3 *Working Days* if there is a delay to the Project Schedule. If the *Trade Contractor* is the cause for the delay then the *Trade Contractor* will develop a recovery plan within 3 *Working Days*. The *Trade Contractor's* recovery plan will include all means necessary to regain the lost time including but not limited to additional manpower, working overtime, working weekends, additional equipment and the like."
- SC5.15 Add new paragraph 3.5.4 as follows:  
"3.5.4 The *Construction Manager* may reasonably rely upon the Project Schedule and the *Trade Contractor* acknowledges that the *Owner* may commence dealings with any third-party, including the procurement of owner-furnished materials, execution of leases and contracts, obtaining financing, hiring and training of employees, and advertising or marketing, or selling the improvements at the project, based upon the Schedule."
- SC5.16 Add new paragraph 3.5.5 as follows:  
"3.5.5 The *Trade Contractor's* construction schedule noted in 3.5.3.1 will include the procurement of all materials and equipment."
- SC5.17 Add new paragraph 3.5.6 as follows:  
"3.5.6 The *Construction Manager's* analysis of the *Trade Contractors* construction schedule shall not relieve the *Trade Contractor* of any obligation for the performance of the *Work*."
- SC5.18 At 3.7.6 delete, "certified" and replace with, "approved"
- SC5.19 Add new paragraph 3.8.4 as follows:  
"3.8.4 The *Owner* will provide heat and lighting to the minimum required by Ministry of Labour. This *Trade Contractor* is responsible for any additional supplementary spot heaters and/or task lighting as required to complete the *Work*."
- SC5.20 Add new paragraph 3.8.5 as follows:  
"3.8.5 The *Owner* will provide 120V, 15A power panels allowing the *Trade Contractor* to operate power tools at any location in the building using a 100 foot extension cord."

- SC5.21 Add new paragraph 3.8.6 as follows:  
 "3.8.6 The *Project* will be constructed by labour working in an "open-shop" environment, union or non-union. Parties causing disruption to the progress of the work will be dismissed from the project and held responsible for any damages caused."
- SC5.22 Add new paragraph 3.9.2 as follows:  
 "3.9.2 The *Trade Contractor* shall maintain current at all times, as-built drawings for the *Work*. The drawings are to be kept on site in a safe and secure lock up. Provide copies of the as-built drawings to the *Construction Manager* immediately upon request for review by the *Construction Manager*, or the *Consultant*. Upon completion of the *Work* submit 3 sets of the as-built drawings to the *Construction Manager* for review and approval."
- SC5.23 At the end of paragraph 3.10.2 add, "Shop Drawings are to be submitted to the *Construction Manager* within 4 weeks of award of *Contract* or in such instances where submission of the shop drawings within 4 weeks of award is not possible, provide a schedule for the submission of shop drawings acceptable to the *Construction Manager* within 4 weeks of award. The *Trade Contractor* is to provide 8 copies of each submission of which 1 will be returned to the *Trade Contractor* upon completion of review."
- SC5.24 Add new paragraph 3.10.14 as follows:  
 "3.10.14 The *Trade Contractor* is responsible to confirm all dimensions on site prior to fabrication and/or ordering of materials to ensure proper fit of installed product. The review by the *Construction Manager* or the *Consultant* does not relieve the *Trade Contractors* responsibility in this regard."
- SC5.25 Add new paragraph 3.13.4 as follows:  
 "3.13.4 The *Trade Contractor* is responsible for the costs and the carrying out for dust control related to the *Work* of this *Trade Contractor* by whatever means necessary."
- SC5.26 Add new paragraph 3.13.5 as follows:  
 "3.13.5 The *Trade Contractor* is responsible for street cleaning related to its *Work*."
- SC5.27 Add new paragraph 3.13.6 as follows:  
 "3.13.6 The *Trade Contractor* is responsible to clean up all of its debris on a daily basis, and to dump the same in the appropriate container(s) supplied by the *Owner*. ~~In addition one (1) worker from each ten (10) people employed or pro-rated portion thereof, shall be assigned to the *Construction Manager's* clean-up crew one (1) day per week for the duration of the *Trade Contractor's Work period*.~~ Should the *Trade Contractor* fail or refuse to clean their debris, the *Construction Manager* shall clean the debris for the *Trade Contractor* at the *Trade Contractor's* expense. All garbage is to be packaged and separated into appropriate containers as directed by the *Construction Manager* or the requirements of the Works Department and all Municipal authorities having jurisdiction (i.e., Ministry of the Environment and Energy). The complete disposal cost for mixed or contaminated loads shall be back charged to the offending *Trade Contractor*." D  
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- SC5.28 Add new section "GC 3.14 Quality Control and Quality Assurance"
- SC5.29 Add new paragraph 3.14.1 as follows:  
 "3.14.1 The *Trade Contractor* is to submit their *Quality Assurance* program for review and acceptance by the *Construction Manager*."
- SC5.30 Add new paragraph 3.14.2 as follows:

"3.14.2 The *Trade Contractor* is to submit their *Quality Control* program for review and acceptance by the *Construction Manager*. The *Trade Contractors Quality Control* program will be in addition to any *Quality Control* being performed by the *Construction Manager, Consultant* or *Owner*."

**SC6 Part 4 Allowances**

Intentionally left blank.

**SC7 Part 5 Payment**

SC7.1 Delete "GC 5.1 Financing Information Required of the Owner", in its Entirety including 5.1.1 and 5.1.2.

SC7.2 At paragraph 5.2.4 delete, "15 calendar days" and replace with, "20 working days".

SC7.3 Add to the end of paragraph 5.2.4, "The schedule of values will be subject to approval by the *Construction Manager*."

SC7.4 Delete paragraph 5.2.5 in its entirety.

SC7.5 Add new paragraph 5.2.6.3 as follows:  
 "5.2.6.3 with each application a valid WSIB clearance certificate."

SC7.6 Add new paragraph 5.2.6.4 as follows:  
 "5.2.6.4 with each application a copy of all *Change Orders* for which the *Trade Contractor* is claiming a payment for."

SC7.7 Add new paragraph 5.2.6.5 as follows:  
 "5.2.6.5 with each application a copy of approval from the *Construction Manger's* site staff."

SC7.8 Add new paragraph 5.2.6.6 as follows:  
 "5.2.6.6 original documents."

SC7.9 Delete paragraph 5.2.7 in its entirety.

SC7.10 Add new paragraph 5.2.7 as follows:  
 "5.2.7 Applications for payment for *Products* delivered to the *Place of the Project* but not yet incorporated into the *Work* will be at the discretion of the *Owner*. If accepted by the *Owner* the *Trade Contractor* will provide such evidence as the *Construction Manager* and *Owner* may require to establish the value and delivery of the *Products*. In no event will *Products* be permitted to be delivered to the *Project* when the installation is not scheduled to begin for more than 20 working days from the date of the delivery."

SC7.11 Delete paragraph 5.3.1 in its entirety including 5.3.1.1, 5.3.1.2 and 5.3.1.3.

SC7.12 Add new paragraph 5.3.1 as follows:  
 "5.3.1 The *Trade Contractor* must submit the application for payment to the *Construction Manager's* office at 3755 Victoria Park Avenue, Toronto, Ontario, M1W 3Z4 by the 20<sup>th</sup> day of the month including all original documents required as per GC 5.2. The application for payment will reflect all work completed up to and including the 20<sup>th</sup> day of that month."

- SC7.13 Add new paragraph 5.3.2 as follows:  
 "5.3.2 The *Construction Manager* will review and accept the values being claimed in the application for payment during the week prior to the application for payment being submitted as noted in 5.3.1."
- SC7.14 Add new paragraph 5.3.3 as follows:  
 "5.3.3 The Owner's approval will then be complete by the 15<sup>th</sup> of the first month following the application for payment being submitted as noted in 5.3.1. Should adjustments be required the Trade Contractor will be Notified."
- SC7.15 Add new paragraph 5.3.4 as follows:  
 "5.3.4 The payment will be processed by the 15th day of the second month following the application for payment being submitted as noted in 5.3.1."
- SC7.16 Add new paragraph 5.3.5 as follows:  
 "5.3.5 Final Payment shall not become due until all required documentation, such as guarantees, warranties, maintenance manuals and as-built record drawings have been delivered to the *Construction Manager*."
- SC7.17 At paragraph 5.4.2 delete, "whichever of them is the *Payment Certifier*, acting in that capacity,"
- SC7.18 Delete paragraph 5.5.1 and 5.5.2 in their entirety.
- SC7.19 Add new paragraph 5.5.1 as follows:  
 "5.5.1 After the *Construction Manager* confirms ~~the Substantial Performance of the Work~~, the Trade Contractor shall submit to the *Construction Manager* an application for payment of the holdback amount including a Form 6 Certificate of substantial performance as per the Construction Lien Act, proof of publication, CCDC 9A 'Statutory Declaration' and all documents required as per 5.2.6, and Construction Manager shall issue a certificate for payment of the holdback amount and pay holdback
- SC7.20 At paragraph 5.6.1 delete, "*Payment Certifier* has certified" and replace with, "Construction Manager and Consultant have confirmed" to Trade Contractor forthwith
- SC7.21 Delete paragraph 5.6.2 in its entirety.
- SC7.22 At the end of paragraph 5.7.2.1 add the following: " will advise the Trade Contractor in writing that the application is valid or give reasons why it is not valid."
- SC7.23 Delete paragraph 5.7.2.2 in its entirety.
- SC7.24 Delete paragraph 5.7.3 in its entirety.
- SC7.25 At paragraph 5.8.1 delete, "as Certified by the *Payment Certifier*" and delete, "the *Payment Certifier* determines."

**SC8 Part 6 Changes in the Work**

- SC8.1 Add new paragraph 6.2.3 as follows:  
 "6.2.3 When determining the adjustment to the *Contract Price* the *Trade Contractor* will be limited to the estimated costs as per the items identified in 6.3.6, 6.3.7, 6.3.8 and 6.3.14."



SC8.2 Add new paragraph 6.2.4 as follows:  
 "6.2.4 The *Trade Contractor* shall provide a detail cost breakdown of the work within 10 days of receipt of the proposed change. Extensions to the 10 day period will only be granted upon written request. If the *Trade Contractor* fails to submit a cost for the proposed change in the work, the *Construction Manager, Owner* and/or the *Consultant* will make an assessment of the costs which will be final.

SC8.3 Delete paragraph 6.3.6.3 in its entirety.

SC8.4 Add new paragraph 6.3.6.3 as follows:  
 "6.3.6.3 The *Trade Contractor's* percentage fee as noted in paragraph 6.3.6.1 shall be limited to 5% for overhead and 5% for profit."

SC8.5 Add new paragraph 6.3.14 as follows:  
 "6.3.14 Work performed by subcontractors or sub-subcontractors etc. will be subject to the same restrictions as the *Trade Contractor* when pricing the work of a *Change Order* or *Change Directive*.

**SC9 Part 7 Default Notice**

SC9.1 At paragraph 7.1.4.1 delete the following: "provided the *Payment Certifier* has certified such cost to the *Owner* and the *Trade Contractor*"

SC9.2 At paragraph 7.1.5.3 delete the following: "as certified by the *Payment Certifier*"

SC9.3 Delete paragraphs 7.2.2, 7.2.3 and 7.2.4 in their entirety.

**SC10 Part 8 Dispute Resolution**

Intentionally left blank

**SC11 Part 9 Protection of Persons and Property**

SC11.1 At paragraph 9.4.2 delete, "*Owner*" and replace with, "*Construction Manager*".

SC11.2 Add new paragraph 9.4.4 as follows:  
 "9.4.4 The *Owner* and *Construction Manager* have a safety program in place for the site. All *Trade Contractors/Suppliers* shall fully co-operate with the *Construction Manager* to implement the site safety program and comply with requirements of Occupational Health and Safety At R.S.O. 1990 c. 0. 1 (as may be amended from time to time). All *Trade Contractors/Suppliers* are responsible for the safety of their employees, *Trade Contractors*, visitors, *Suppliers* and those for whom the *Trade Contractor's Suppliers* are at law responsible and must ensure that proper safety equipment and procedures are used at all times. Regular meetings regarding safe work procedures will be held on site for all workers and will be organized by the *Construction Manager*. The *Trade Contractor/Supplier* shall fully indemnify the *Owner* and *Construction Manager* for all costs, damages and pay any and all fines levied against the *Owner* its Lender or any affiliated or related entities or their shareholders, officers, directors, employees or those for whom they are at law responsible resulting from the *Trade Contractor/Supplier*, it's

employees, suppliers and those for whom the *Trade Contractor/Supplier* are at law responsible for failing to adhere to the Safety Requirements of all laws and authorities having jurisdiction. All *Trade Contractors/Suppliers* on this site will be required to have a written Health & Safety Policy according to the requirements of the Occupational Health & Safety Act R.S.O. 1190 c. 0. 1 (as may be amended from time to time) and must provide a copy to the Site Superintendent prior to starting any work on the site. All *Trade Contractors* are required to submit the following information regarding their Safety Program and accident experience: 1) Safety Policy and Programs; 2) Outline of Safety Training (i.e., W.H.M.I.S.); 3) CAD-7 Experience Rating Summary. The *Trade Contractor* shall be fully responsible for all acts of negligence committed by its personnel and for any accidents or damages caused as a result of such acts of negligence. The *Trade Contractor* shall provide the *Owner* and *Construction Manager* with copies of all Project Inspection Reports issued by the Ontario Ministry of Labour, Construction Health and Safety Branch. The *Trade Contractor* shall provide the *Owner* and *Construction Manager* with copies of all accident reports."

SC11.3 Add new paragraph 9.4.5 as follows:

"9.4.5 The *Trade Contractor* will submit to the *Construction Manager* prior to starting the *Work* at the *Place of the Project* a signed copy of the Occupational Health and Safety Trade Contractor Agreement between the *Owner* and the *Trade Contractor* that was included in the Tender Package for the *Work*."

#### SC12 Part 10 Governing Regulations

SC12.1 Add new paragraph 10.2.8 as follows:

"10.2.8 The *Trade Contractor* agrees to complete the *Work* in accordance with all applicable federal, provincial and municipal laws, regulations and codes and all regulations thereunder, amendments thereto or substitutions therefore, including, but not limited to the following:

- a. The Ontario Building Code;
- b. The National Building Code including all Supplements;
- c. Canada Mortgage and Housing Corporation Builders' Bulletins;
- d. Ontario Electrical Safety Code;
- e. Canada Plumbing Code;
- f. Residential Standards Canada;
- g. The National Housing Act, R.S.C. 1985, Chap. N-11, as amended;
- h. The Occupational Health and Safety Act and Regulations for Construction Projects, Revised SO, 1990, Chapter 0.1m as amended, O. Reg. 213/91, as amended by O. Reg. 631/94, O. Reg. 143/99, 571/99, 145/00 and 527/00, R.R.O. 1990, Reg. 834;
- i. The Elevating Devices Act, R.S.O. 1980, Chapter 135, as amended;
- j. Workplace Safety and Insurance Act, 1997, SO, 1997, Chapter 16, Schedule A. and O. Reg. 562/99, 1101, 456/97, 175/98, 455/97, 259/92;
- k. The Construction Lien Act, S.O. 1983, as amended;
- l. The Tarion Warranty Corporation Construction Performance Guidelines, April 2, 2003;
- m. Tarion Warranty Corporation Regulations and its latest amendments and
- n. The Ontario New Home Warranties Plan Act
- o. In the event of any differences between two codes, two statutes or a statute and a code, the more stringent code or statute shall govern.

#### SC13 Part 11 Insurance

- SC13.1 Delete paragraph 11.1.1 in its entirety. Including paragraphs 11.1.1.1, 11.1.1.2 and 11.1.1.3
- SC13.2 Add new paragraph 11.1.1 as follows:  
 "11.1.1 Without restricting the generality of GC 12.1- INDEMNIFICATION, the *Trade Contractor* shall provide, maintain, and pay for the insurance coverages specified below. Unless otherwise stipulated, the duration of each insurance policy shall be from the date of commencement of the *Work* until the date of the final certificate for payment. Prior to commencement of the *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Trade Contractor* shall promptly provide the *Construction Manager* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements. The policies shall be in a form acceptable to the *Construction Manager* and endorsed to provide the *Construction Manager* with not less than 15 days notice in writing in advance of cancellation, change, or amendment restricting coverage."
- SC13.3 Add new paragraph 11.1.1.1 as follows:  
 "11.1.1.1 Automobile Liability Insurance:  
 Automobile liability insurance in respect of licensed vehicles shall have limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property, covering all licensed vehicles owned or leased by the *Trade Contractor*. Where the policy has been issued pursuant to a government operated automobile insurance system, the *Trade Contractor* shall provide the *Construction Manager* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Trade Contractor*."
- SC13.4 Add new paragraph 11.1.1.2 as follows:  
 "11.1.1.2 Aircraft and Watercraft Liability Insurance:  
 Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the *Work*, including use of additional premises, shall be subject to limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and limits of not less than \$5,000,000 for aircraft passenger hazard."
- SC13.5 Add new paragraph 11.1.1.3 as follows:  
 "11.1.1.3 *Trade Contractors'* Equipment Insurance:  
 "All Risk" contractors' equipment insurance covering construction machinery and equipment (including contractors building and equipment, the capital cost of any item which is not included in the cost of new construction) owned, rented, leased or used by the *Trade Contractor* for the performance of the *Work*, including boiler insurance on temporary boiler and pressure vessels. Such policies will not allow for subrogation claims against the *Owner* or *Construction Manager* or their employees."
- SC13.6 Delete paragraph 11.1.3 in its entirety.
- SC13.7 Add new paragraph 11.1.3 as follows:  
 "11.1.3 The *Owner* shall obtain, maintain and pay for "wrap-up" general liability insurance in the joint names of the *Owner*, the *Construction Manager*, the *Consultant*, and all *Trade Contractors*, and all subconsultants, and all trade subcontractors with a limit of not less than \$25,000,000 per occurrence and a deductible not more than \$25,000. The coverage shall be primary and non-contributing to all other insurance policies and shall not be substantially less than the insurance provided by IBC Form 2100, (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC form 2320, except for liability arising from damage to the *Project* during construction, which shall be limited to the completed operations period. The insurance shall be maintained from the date of

commencement of the *Project* until deficiency state at which point the *Owner* is responsible to provide coverage for completed operations hazards for a period of 3 years thereafter. In order to achieve the limit of insurance required the use of primary and excess liability policies is acceptable."

SC13.8 Delete paragraph 11.1.4.1 in its entirety.

SC13.9 Add new paragraph 11.1.4.1 as follows:

"11.1.4.1 The *Owner* shall obtain, maintain and pay for All Risk "broad form" property insurance including but not limited to the perils of flood, earthquake and sewer back-up in the joint names of the *Owner*, the *Owner's* Mortgagee, the *Construction Manager*, the *Consultant*, and all *Trade Contractors*. The policy shall have limits of not less the full replacement cost of the work including reoccurring soft costs subject however to limits of not less than 1.1 times the Construction Cost with a deductible not greater than \$25,000 except for the perils of sewer back-up, water damage, flood and earthquake. Such deductibles for sewer back-up, water damage and flood will not exceed \$50,000. Earthquake which will contain a deductible of not greater than 5% of the total values insured or \$100,000 whichever is greater. Loss if any will be payable to the *Owner*, the *Owner's* Mortgagee, the *Construction Manager*, the *Consultant*, and all *Trade Contractors* as their interest may appear. Providing the *Owner*, the *Owner's* Mortgagee, the *Construction Manager*, the *Consultant*, and all *Trade Contractors* will use the proceeds from any insurance to restore the work as nearly as possible to its condition before such loss or damage occurred. Such coverage will not include the replacement cost of any property not included in the capital cost of new construction. The All Risk "broad form" property insurance shall be provided from the date of commencement of the *Project* until the earliest of.

.1 120 days after the *Project In Use Date* or the registration of the condominium, whichever is later.

.2 on the commencement of use or occupancy unless such use or occupancy is for construction purposes, commercial purposes, habitational purposes, parking purposes, or for the installation and testing and commissioning of equipment forming part of the *Project*.

.3 when the *Place of the Project* is left unattended for more than 30 consecutive calendar days.

The *Owner* is not required to provide coverage for Asbestos, Cyber Risks, Mould or Terrorism."

SC13.10 Delete paragraph 11.1.4.2 in its entirety.

SC13.11 Add new paragraph 11.1.4.2 as follows:

"11.1.4.2 The *Owner* shall obtain, maintain and pay for Comprehensive Boiler and Machinery insurance including but not limited coverage for testing and commissioning in the joint names of the *Owner*, the *Construction Manager*, the *Consultant*, and all *Trade Contractors*. The policy shall have limits of not less the full replacement cost of the work including reoccurring soft costs subject however to limits of not less than 1.1 times the Construction Cost with a deductible not greater than \$25,000 except for Loss if any will be payable to the *Owner*, the *Owner's* Mortgagee and the *Construction Manager* as their interest may appear. Providing the *Owner* is not in default of any mortgage requirements the *Owner* and the *Owner's* Mortgagee will use the proceeds from any insurance to restore the work as nearly as possible to its condition before such loss or damage occurred. Such coverage will not include the replacement cost of any property not included in the capital cost of new construction. The Comprehensive Boiler and Machinery insurance shall be provided from the date of commencement of the *Project* until the earliest of.

.1 120 days after the *Project In Use Date* or the registration of the condominium, whichever is later.

.2 on the commencement of use or occupancy unless such use or occupancy is for construction purposes, commercial purposes, habitational purposes, parking purposes, or for the installation and testing and commissioning of equipment forming part of the *Project*.

.3 when the *Place of the Project* is left unattended for more than 30 consecutive calendar days. The *Owner* is not required to provide coverage for Asbestos, Cyber Risks, Mould or Terrorism.

SC13.12 At paragraph 11.1.4.3 delete, "The "Broad form" property and boiler and machinery policies shall provide that in the case of a loss or damage payment shall be made to the *Owner*, the *Trade Contractor*, the *Construction Manager* and the *Consultant* as their interest may appear."

SC13.13 Delete paragraph 11.1.5.2 in its entirety.

SC13.14 Delete paragraph 11.1.8 in its entirety.

SC13.15 Delete paragraph 11.1.9 in its entirety.

SC13.16 Delete paragraph 11.1.10 in its entirety.

SC13.17 Add new paragraph 11.1.11 as follows:

"11.1.11 Notwithstanding the requirement of the *Owner* to take out and maintain Wrap-up Liability Insurance the *Trade Contractor* shall take out and maintain Commercial General Liability Insurance (for all operations not insured under the Wrap-Up Liability Insurance Policy or for which the *Trade Contractor* desires additional insurance) with limits not less than \$5,000,000 covering the *Trade Contractor* and all operations of the *Trade Contractors* sub-contractors. The *Owner* and *Construction Manager* will be included as additional insured's, and such policies will be endorsed to provide a waiver of subrogation in favour of the *Owner* and *Construction Manager* or their employees."

SC13.18 Add new paragraph 11.1.12 as follows:

"11.1.12 General Insurance Provisions

- a. No Representation of Coverage Adequacy. By requiring the insurance as set out herein, the *Owner* and *Construction Manager* and their associated and affiliated companies, their officers, directors, members, managers, partners and employees, do not represent that the coverage and limits will necessarily be adequate to protect the *Trade Contractor*. The insurance required hereunder may be contained in one or more policies prior to commencement of any work or services.
- b. The *Trade Contractor* shall furnish to the *Owner* and *Construction Manager*, certificates of insurance or copies of policies showing that such insurance is in force within 10 days of award and as requested thereafter.
- c. In the event of any failure of the *Trade Contractor* to furnish and maintain insurance hereunder, the *Owner*, at its option and without waiving default of the *Trade Contractor*, shall have the right, but not the obligation, to obtain such insurance for and in the name of the *Trade Contractor*. In such event, the *Owner*, may, at its absolute discretion and option, either require that the *Trade Contractor* pay the cost thereof upon demand or deduct from any sums owing to the *Trade Contractor* all costs for obtaining such appropriate insurance. In either event, the *Trade Contractor* shall furnish to the *Owner*, all information required by the insurance carrier.
- d. The insurance requirements of this contract shall be placed with insurers licensed to operate in the Province of Ontario, with A.M. Best ratings of at least "A".



**SC14 GC 12.1 Indemnification**

SC14.1 Delete paragraph 12.1.2.2 in its entirety.

SC14.2 Add new paragraph 12.1.2.2 as follows:

"12.1.2.2 In respect to losses suffered by the *Owner* and the *Trade Contractor* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 – CONTRACT PRICE or \$5,000,000, but in no event shall the sum be greater than \$20,000,000."

SC14.3 Delete paragraph 12.3.1 in its entirety.

SC14.4 Add new paragraph 12.3.1 as follows:

"12.3.1 Except for extended warranties as described in paragraph 12.3.7, the warranty period under the *Contract* is ~~two~~ years or such longer period as specified in the contract documents or as required by the Tarion Corporation and the Ontario New Home Warranties Plan Act R.S.O. 1990 c.o.31 ("ONHWPA") from the date upon which the condominium corporation is registered, all in accordance with the requirements of the Tarion Corporation and ONHWPA Act."

SC14.5 At paragraph 12.3.4 delete, "one year warranty period" and replace with, "two year warranty period".

SC14.6 At paragraph 12.3.5 delete, "one year warranty period" and replace with, "two year warranty period".

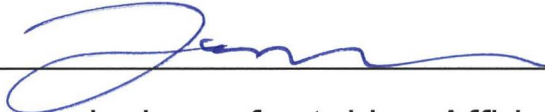
SC14.7 At paragraph 12.3.7 delete, "one year warranty period" and replace with, "two year warranty period".

SC14.8 Add new paragraph 12.3.8, "Upon written notice from the *Owner* or *Construction Manager* to the *Trade Contractor* of any defect or deficiency the *Trade Contractor* will either make the necessary repairs, or in the event of failure to do so within five (5) working days after receiving written notification from the *Owner*, the *Owner* may make such repairs at the *Trade Contractor's* expense, which the *Trade Contractor* agrees to pay upon demand."

END OF SUPPLEMENTARY CONDITIONS



This is Exhibit "1" referred to in the  
Affidavit of Aidan Ball  
sworn before me this 10<sup>th</sup> day of March 2022

  
A Commissioner for taking Affidavits

**CCDC 17**

Stipulated Price Contract between  
Owner and Trade Contractor  
for Construction Management Projects

2010

Massey Tower

Forma-Con

Apply a CCDC 17 copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 17 – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

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CCDC 17 and CCDC 5A 'Construction Management Contract-For Services' are complimentary documents. CCDC 17 is the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. It reflects recommended industry practices. CCDC 17 can have important consequences. The CCDC and its constituent member organizations do not accept any responsibility or liability for loss or damage which may be suffered as a result of the use or interpretation of CCDC 17.

**AGREEMENT BETWEEN OWNER AND TRADE CONTRACTOR FOR CONSTRUCTION MANAGEMENT PROJECTS**

This Agreement made on the 19 day of December in the year 2014 .

by and between the parties

MOD Developments (197 Yonge) Limited Partnership

hereinafter called the *Owner*

and

Forma-Con Construction ( A DIVISION OF 1428502 ONTARIO LIMITED)

hereinafter called the *Trade Contractor*

The *Owner* and the *Trade Contractor* agree as follows:

**ARTICLE A-1 THE WORK**

The *Trade Contractor* shall:

1.1 perform the *Work* required by the *Contract Documents* for

Concrete forming and falsework, void forming, concrete placing and finishing, temporary shoring, re-shoring, hoisting, and placing of all reinforcing steel and concrete accessories

*insert above the description of the Work*

for the *Project*

Massey Tower

Forma-Con

*insert above the title of the Project*

located at

197 Yonge Street, Toronto, Ontario Canada

*insert above the Place of the Project*

for which the Agreement has been signed by the parties, and for which

Tucker HiRise Construction Inc.

*insert above the name of the Construction Manager*

is acting as and is hereinafter called the *Construction Manager*, and for which

Hariri Pontarini Architects

*insert above the name of the Consultant*

is acting as and is hereinafter called the *Consultant*, and for which

the *Construction Manager*\* / *Consultant*\* is acting as the *Payment Certifier*, and (\* Strike out inapplicable term.)

- 1.2 do and fulfill everything indicated by the *Contract Documents*, and
- 1.3 perform the *Work*:
- .1 in accordance with a schedule provided by the *Owner* at the time of signing the *Contract*, or
  - .2 in accordance with a schedule mutually agreed upon if provided by the *Owner* after the signing of the *Contract*; or
  - .3 if no schedule is provided by the *Owner*, commence the *Work* by the            day of            in the year            and, subject to adjustment in *Contract Time* as provided for in the *Contract Documents*, attain *Substantial Performance of the Work*, by the            day of            in the year            .

#### ARTICLE A-2 AGREEMENTS AND AMENDMENTS

- 2.1 The *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the *Work*, including the bidding documents that are not expressly listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS.
- 2.2 The *Contract* may be amended only as provided in the *Contract Documents*.

#### ARTICLE A-3 CONTRACT DOCUMENTS

- 3.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – THE WORK:
- Agreement Between *Owner* and *Trade Contractor*
  - Definitions
  - The General Conditions of the *Contract*

\*  
The additional documents listed on Appendix C of this Agreement are part of the Contract Documents.

\* (Insert here, attaching additional pages if required, a list identifying all other Contract Documents e.g. supplementary conditions; information documents; specifications, giving a list of contents with section numbers and titles, number of pages, and date; material finishing schedules; drawings, giving drawing number, title, date, revision date or mark; addenda, giving title, number, date; schedule)

#### ARTICLE A-4 CONTRACT PRICE

- 4.1 The *Contract Price*, which excludes *Value Added Taxes*, is:
- |  |                 |                  |
|--|-----------------|------------------|
| Twenty Million Four Hundred Twenty-Nine Thousand Dollars | 100/100 dollars | \$ 20,429,000.00 |
|--|-----------------|------------------|
- 4.2 *Value Added Taxes* (at 13 %) payable by the *Owner* to the *Trade Contractor* are:
- |   |                 |                 |
|---|-----------------|-----------------|
| Two Million Six Hundred Fifty-Five Thousand Seven Hundred & Seventy Dollars | 100/100 dollars | \$ 2,655,770.00 |
|---|-----------------|-----------------|
- 4.3 Total amount payable by the *Owner* to the *Trade Contractor* for the *Work* is:
- |   |                 |                  |
|---|-----------------|------------------|
| Twenty-Three Million Eighty-Four Thousand Seven Hundred & Seventy Dollars | 100/100 dollars | \$ 23,084,770.00 |
|---|-----------------|------------------|
- 4.4 These amounts shall be subject to adjustments as provided in the *Contract Documents*.
- 4.5 All amounts are in Canadian funds.

#### ARTICLE A-5 PAYMENT

- 5.1 Subject to the provisions of the *Contract Documents*, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of Ten percent ( 10 %), the *Owner* shall:
- .1 make progress payments to the *Trade Contractor* on account of the *Contract Price* when due in the amount certified by the *Payment Certifier* together with such *Value Added Taxes* as may be applicable to such payment, and
  - .2 upon *Substantial Performance of the Work*, pay to the *Trade Contractor* the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
  - .3 upon the issuance of the final certificate for payment, pay to the *Trade Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.
- 5.2 In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made to the *Trade Contractor* in accordance with the provisions of GC 11.1 – INSURANCE.
- 5.3 Interest
- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
    - (1) 2% per annum above the prime rate for the first 60 days.
    - (2) 4% per annum above the prime rate after the first 60 days.
 Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by  
 The Royal Bank of Canada
 

*(Insert name of chartered lending institution whose prime rate is to be used)*
  - .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, from the date the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.

#### ARTICLE A-6 COMMUNICATION

- 6.1 Except for the direct communications described in paragraph 6.2 of this Article, all communications between the *Trade Contractor*, and the *Owner*, the *Consultant* or the *Payment Certifier* that relate to the *Contract* shall be forwarded through the *Construction Manager*.
- 6.2 The parties shall inform the *Construction Manager* of the following direct communications:
- .1 between the *Payment Certifier* and the *Owner*, *Consultant* or *Trade Contractor* as described in Part 5 of the General Conditions – PAYMENT;
  - .2 among the *Owner*, *Consultant* and *Trade Contractor* with respect to *Notices in Writing*; and
  - .3 as otherwise expressly specified in the *Contract Documents*.

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**ARTICLE A-7 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING**

- 7.1 *Notices in Writing* will be addressed to the recipient at the address set out below.
- 7.2 The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.
- 7.3 A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working Day* next following such day.
- 7.4 A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission thereof.
- 7.5 An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

**Owner**

MOD Developments (197 Yonge) Limited Partnership

*name of Owner\**

MOD Developments Inc.  
8 Price Street, 4th Floor  
Toronto, ON M4W 1Z4

*address*

(647) 748-2822

*facsimile number*

nlalani@moddevelopments.com

*email address*

**Trade Contractor**

Forma-Con Construction ( A DIVISION OF 1428502 ONTARIO LIMITED)

*name of Trade Contractor\**

407 Basaltic Road,  
Concord, ON L4K 4W8

*address*

(905) 303-8010

*facsimile number*

michaelsolano@forma-con.com

*email address*

**Construction Manager**

Tucker HiRise Construction Inc.

*name of Construction Manager\**

3755 Victoria Park Ave.  
Toronto, ON, M1W 3Z4

*address*

(416) 744-2700

*facsimile number*

chris.mallinos@tuckerhirise.com

*email address*

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**Consultant**

Hariri Pontarini Architects

*name of Consultant \**602 King Street West  
Toronto, ON, M5V 1M6*address*

(416) 929-8924

*facsimile number*

pyapur@hp-arch.com

*email address**\* If it is intended that a specific individual must receive the notice, that individual's name shall be indicated.***ARTICLE A-8 LANGUAGE OF THE CONTRACT**

8.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English / ~~French~~\* language shall prevail.

*\* Complete this statement by striking out inapplicable term.*

8.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

**ARTICLE A-9 SUCCESSION**

9.1 The *Contract* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

In witness whereof the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED

In the presence of:

**WITNESS**

*signature of witness*

*name of person signing*

*signature of witness*

*name of person signing*

**OWNER**

MOD Developments (197 Yonge) Limited Partnership

*name of Owner*

*signature*

Noorez Lalani, Vice President

*name and title of person signing*

*signature*

Gary Switzer, President

*name and title of person signing*

**WITNESS**

*signature of witness*

*name of person signing*

*signature of witness*

*name of person signing*

**TRADE CONTRACTOR**

Forma-Con Construction ( A DIVISION OF 1428502 ONTARIO LIMITED)

*name of Trade Contractor*

*signature*

Michael Solano, President

*name and title of person signing*

*signature*

*name and title of person signing*

N.B. Where legal jurisdiction, local practice or Owner or Trade Contractor requirement calls for:

- (a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or
- (b) the affixing of a corporate seal, this Agreement should be properly sealed.

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## DEFINITIONS

The following Definitions shall apply to all *Contract Documents*. References in the definition to the singular shall be considered to include the plural as the context requires.

### Change Directive

A *Change Directive* is a written instruction issued by the *Owner* through the *Construction Manager* and signed by the *Owner* directing the *Trade Contractor* to proceed with a change in the *Work* within the general scope of the *Contract Documents* prior to the *Owner* and the *Trade Contractor* agreeing upon adjustments in the *Contract Price* and the *Contract Time*.

### Change Order

A *Change Order* is a written amendment to the *Contract* issued by the *Construction Manager* and signed by the *Owner* and the *Trade Contractor* stating their agreement upon:

- a change in the *Work*;
- the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
- the extent of the adjustment in the *Contract Time*, if any.

### Construction Equipment

*Construction Equipment* means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the *Work* but is not incorporated into the *Work*.

### Construction Manager

The *Construction Manager* is the person or entity engaged by the *Owner* and identified as such in the Agreement.

### Consultant

The *Consultant* is the person or entity engaged by the *Owner* and identified as such in the Agreement. The *Consultant* is the Architect, the Engineer or entity licensed to practise in the province or territory of the *Place of the Project*.

### Contract

The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.

### Contract Documents

The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon between the parties.

### Contract Price

The *Contract Price* is the amount stipulated in Article A-4 of the Agreement – CONTRACT PRICE.

### Contract Time

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE WORK from commencement of the *Work* to *Substantial Performance of the Work*.

### Drawings

The *Drawings* are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location and dimensions of the *Work*, generally including plans, elevations, sections, details, and diagrams.

### Notice in Writing

A *Notice in Writing*, where identified in the *Contract Documents*, is a written communication between the parties or between them and the *Construction Manager* or the *Consultant* that is transmitted in accordance with the provisions of Article A-7 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

### Owner

The *Owner* is the person or entity identified as such in the Agreement.

### Payment Certifier

The *Payment Certifier* is either the *Construction Manager* or the *Consultant* identified as such in the Agreement.

### Place of the Project

The *Place of the Project* is the designated site or location of the *Project* identified in the *Contract Documents*.

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**Product**

*Product* means material, machinery, equipment, and fixtures incorporated into the *Work*, but does not include *Construction Equipment*.

**Project**

The *Project* means the total construction contemplated of which the *Work* may be the whole or a part.

**Project In-Use Date**

*Project In-Use Date* shall have been reached when the *Project* is ready for use or is being used for the purpose intended and is so confirmed in writing by the *Construction Manager* in consultation with the *Consultant* and the *Owner*.

**Provide**

*Provide* means to supply and install.

**Shop Drawings**

*Shop Drawings* are drawings, diagrams, illustrations, schedules, performance charts, brochures, *Product* data, and other data which the *Trade Contractor* provides to illustrate details of portions of the *Work*.

**Specifications**

The *Specifications* are that portion of the *Contract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, quality, and the services necessary for the performance of the *Work*.

**Substantial Performance of the Work**

*Substantial Performance of the Work* is as defined in the lien legislation applicable to the *Place of the Project*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Payment Certifier*.

**Supplemental Instruction**

A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Construction Manager* to supplement the *Contract Documents* as required for the performance of the *Work*.

**Supplier**

A *Supplier* is a person or entity having a direct contract with the *Trade Contractor* to supply *Products*.

**Temporary Work**

*Temporary Work* means temporary supports, structures, facilities, services, and other temporary items, excluding *Construction Equipment*, required for the execution of the *Work* but not incorporated into the *Work*.

**Trade Contractor**

The *Trade Contractor* is the person or entity identified as such in the Agreement.

**Trade Subcontractor**

A *Trade Subcontractor* is a person or entity having a direct contract with the *Trade Contractor* to perform a part or parts of the *Work* at the *Place of the Project*.

**Value Added Taxes**

*Value Added Taxes* means such sum as shall be levied upon the *Contract Price* by the Federal or any Provincial or Territorial Government and is computed as a percentage of the *Contract Price* and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the *Trade Contractor* by tax legislation.

**Work**

The *Work* means the total construction and related services required by the *Contract Documents*.

**Working Day**

*Working Day* means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the *Place of the Project*.

## GENERAL CONDITIONS OF THE CONTRACT

### PART 1 GENERAL PROVISIONS

#### GC 1.1 CONTRACT DOCUMENTS

- 1.1.1 The intent of the *Contract Documents* is to include the labour, *Products*, and services necessary for the performance of the *Work* by the *Trade Contractor* in accordance with these documents. It is not intended, however, that the *Trade Contractor* shall supply products or perform work not consistent with, not covered by, or not properly inferable from the *Contract Documents*.
- 1.1.2 Nothing contained in the *Contract Documents* shall create any contractual relationship between:
- .1 the *Owner* and a *Trade Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any of the *Work* ;
  - .2 the *Construction Manager* and the *Trade Contractor*, a *Trade Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any portion of the *Work*; or
  - .3 the *Consultant* and the *Trade Contractor*, a *Trade Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any portion of the *Work*.
- 1.1.3 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.5 Neither the organization of the *Specifications* nor the arrangement of *Drawings* shall control the *Trade Contractor* in dividing the work among *Trade Subcontractors* and *Suppliers*.
- 1.1.6 If there is a conflict within the *Contract Documents*:
- .1 the order of priority of documents, from highest to lowest, shall be
    - the Agreement between the *Owner* and *Trade Contractor*,
    - the Definitions,
    - Supplementary Conditions,
    - the General Conditions of the *Contract*,
    - Division 1 of the *Specifications*,
    - technical *Specifications*,
    - material and finishing schedules,
    - the *Drawings*.
  - .2 *Drawings* of larger scale shall govern over those of smaller scale of the same date.
  - .3 dimensions shown on *Drawings* shall govern over dimensions scaled from *Drawings*.
  - .4 later dated documents shall govern over earlier documents of the same type.
  - .5 noted materials and annotations shall govern over graphic indications.
- 1.1.7 The *Owner* shall provide the *Trade Contractor*, without charge, sufficient copies of the *Contract Documents* to perform the *Work*.
- 1.1.8 *Specifications*, *Drawings*, models, and copies thereof furnished by the *Consultant* are and shall remain the *Consultant's* property. Signed *Contract* sets shall belong to each party to the *Contract*. All *Specifications*, *Drawings* and models prepared by the *Consultant* and issued to the *Trade Contractor* are to be used only with respect to the *Work* and are not to be used on other work. These *Specifications*, *Drawings* and models are not to be copied or altered in any manner without the written authorization of the *Consultant*.
- 1.1.9 Models furnished by the *Trade Contractor* at the *Owner's* expense are the property of the *Owner*.

#### GC 1.2 LAW OF THE CONTRACT

- 1.2.1 The law of the *Place of the Project* shall govern the interpretation of the *Contract*.

### GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
- 1.3.2 No action or failure to act by the *Owner*, *Construction Manager*, *Consultant*, *Payment Certifier*, or *Trade Contractor* shall constitute a waiver of any right or duty afforded any of them under the *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### GC 1.4 ASSIGNMENT

- 1.4.1 Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

## PART 2 ADMINISTRATION OF THE CONTRACT

### GC 2.1 AUTHORITY OF THE CONSTRUCTION MANAGER AND THE CONSULTANT

- 2.1.1 The *Construction Manager* and the *Consultant* will have authority to act on behalf of the *Owner* only to the extent provided in the *Contract Documents*, unless otherwise modified by written agreement as provided in paragraph 2.1.2.
- 2.1.2 The duties, responsibilities and limitations of authority of the *Construction Manager* and the *Consultant* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner* and the *Trade Contractor*.
- 2.1.3 If the employment of the *Construction Manager* or the *Consultant* is terminated, the *Owner* shall immediately appoint or reappoint those against whom the *Trade Contractor* makes no reasonable objection and whose duties, responsibilities and limitations of authority under the *Contract Documents* will be that of the former *Construction Manager* or the former *Consultant*, as the case may be.
- 2.1.4 If the employment of the *Construction Manager* or the *Consultant* as the *Payment Certifier* is terminated, the *Owner* shall immediately appoint or reappoint the *Construction Manager* or the *Consultant* as the *Payment Certifier*.

### GC 2.2 ROLES OF THE CONSTRUCTION MANAGER AND THE CONSULTANT

- 2.2.1 The *Construction Manager* will:
- .1 provide administration of the *Contract* as described in the *Contract Documents*;
  - .2 in the first instance, receive all questions in writing by the *Owner* or the *Trade Contractor* for interpretations and findings relating to the performance of the *Work* or the interpretation of the *Contract Documents* except with respect to GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER;
  - .3 in the first instance, give interpretations and make findings on matters in question relating to the performance of the *Work* or the requirements of the *Contract Documents*, except with respect to any and all architectural and engineering aspects of the *Work* or GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER; and
  - .4 during the progress of the *Work*, issue *Supplemental Instructions* to the *Trade Contractor* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Construction Manager* and the *Trade Contractor*.
- 2.2.2 The *Consultant* will:
- .1 visit the *Place of the Project* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the *Work* and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*; and
  - .2 in the first instance, give interpretations and make findings on matters in question relating to the requirements of the design.
- 2.2.3 The *Construction Manager* and the *Consultant* will:
- .1 have authority to reject work which in their opinion does not conform to the requirements of the *Contract Documents* and whenever it is considered necessary or advisable, require inspection or testing of work, whether or not such work is fabricated, installed or completed. However, neither the authority of the *Construction Manager* or the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Construction Manager* or the *Consultant* to the *Trade Contractor*, *Trade Subcontractors*, *Suppliers*, or their agents, employees, or other persons performing any of the *Work*; and

.4 on expiry of the warranty period, charge the *Trade Contractor* the amount by which the cost of corrections to the *Trade Contractor's* work under GC 12.3 – WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Trade Contractor* the difference.

7.1.6 The *Trade Contractor's* obligation under the *Contract* as to quality, correction and warranty of the work performed by the *Trade Contractor* up to the time of termination shall continue in force after such termination of the *Contract*.

#### GC 7.2 TRADE CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

7.2.1 If the *Owner* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner's* insolvency, or if a receiver is appointed because of the *Owner's* insolvency, the *Trade Contractor* may, without prejudice to any other right or remedy the *Trade Contractor* may have, terminate the *Contract* by giving the *Owner* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.

7.2.2 If the *Work* should be suspended or otherwise delayed for a period of 20 *Working Days* or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Trade Contractor* or of anyone directly or indirectly employed or engaged by the *Trade Contractor*, the *Trade Contractor* may, without prejudice to any other right or remedy the *Trade Contractor* may have, terminate the *Contract* by giving the *Owner* *Notice in Writing* to that effect.

7.2.3 The *Trade Contractor* may give *Notice in Writing* to the *Owner*, with a copy to the *Construction Manager* and the *Consultant*, that the *Owner* is in default of the *Owner's* contractual obligations if:

- .1 the *Owner* fails to furnish, when so requested by the *Trade Contractor*, reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*, or
- .2 the *Payment Certifier* fails to issue a certificate as provided in Part 5 of the General Conditions – PAYMENT, or
- .3 the *Owner* fails to pay the *Trade Contractor* when due the amounts certified by the *Payment Certifier* or awarded by arbitration or court, or
- .4 the *Owner* violates the requirements of the *Contract* to a substantial degree and the *Construction Manager*, except for GC 5.1 – FINANCING INFORMATION REQUIRED OF THE OWNER, confirms by written statement to the *Trade Contractor* that sufficient cause exists.

7.2.4 The *Trade Contractor's* *Notice in Writing* to the *Owner* provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 *Working Days* following the receipt of the *Notice in Writing*, the *Trade Contractor* may, without prejudice to any other right or remedy the *Trade Contractor* may have, suspend the *Work* or terminate the *Contract*.

7.2.5 If the *Trade Contractor* terminates the *Contract* under the conditions set out above, the *Trade Contractor* shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Trade Contractor* may have sustained as a result of the termination of the *Contract*.

### PART 8 DISPUTE RESOLUTION

#### GC 8.1 AUTHORITY OF THE CONSTRUCTION MANAGER AND THE CONSULTANT

8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by findings of the *Construction Manager* or the *Consultant* as provided in GC 2.2 – ROLE OF THE CONSTRUCTION MANAGER AND THE CONSULTANT, shall be settled in accordance with the requirements of Part 8 of the General Conditions – DISPUTE RESOLUTION.

8.1.2 If a dispute arises under the *Contract* in respect of a matter in which neither the *Construction Manager* nor the *Consultant* have authority under the *Contract* to make a finding, the procedures set out in paragraph 8.1.3 and paragraphs 8.2.3 to 8.2.8 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION, and in GC 8.3 – RETENTION OF RIGHTS apply to that dispute with the necessary changes to detail as may be required.

8.1.3 If a dispute is not resolved promptly, the *Construction Manager* will give such instructions as in the *Construction Manager's* opinion are necessary for the proper performance of the *Work* and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay the *Trade Contractor* costs incurred by the *Trade Contractor* in carrying out such instructions which the *Trade Contractor* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Work*.

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## GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

- 8.2.1 In accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing, the parties shall appoint a Project Mediator
- .1 within 20 *Working Days* after the *Contract* was awarded, or
  - .2 if the parties neglected to make an appointment within the 20 *Working Days*, within 10 *Working Days* after either party by *Notice in Writing* requests that the Project Mediator be appointed.
- 8.2.2 A party shall be conclusively deemed to have accepted a finding of the *Construction Manager* or the *Consultant* under GC 2.2 - ROLES OF THE CONSTRUCTION MANAGER AND THE CONSULTANT and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 *Working Days* after receipt of that finding, the party sends a *Notice in Writing* of dispute to the other party, the *Construction Manager* and the *Consultant*, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract Documents*. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing* setting out particulars of this response and any relevant provisions of the *Contract Documents*.
- 8.2.3 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.2.4 After a period of 10 *Working Days* following receipt of a responding party's *Notice in Writing* of reply under paragraph 8.2.2, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing.
- 8.2.5 If the dispute has not been resolved within 10 *Working Days* after the Project Mediator was requested under paragraph 8.2.4 or within such further period agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving *Notice in Writing* to the *Owner*, the *Trade Contractor* and the *Construction Manager*.
- 8.2.6 By giving a *Notice in Writing* to the other party and the *Construction Manager*, not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may refer the dispute to be finally resolved by arbitration under the latest edition of the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing. The arbitration shall be conducted in the jurisdiction of the *Place of the Project*.
- 8.2.7 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 8.2.6 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.2.6 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.
- 8.2.8 If neither party, by *Notice in Writing*, given within 10 *Working Days* of the date of *Notice in Writing* requesting arbitration in paragraph 8.2.6, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.2.6 shall be
- .1 held in abeyance until
    - (1) *Substantial Performance of the Work*,
    - (2) the *Contract* has been terminated, or
    - (3) the *Trade Contractor* has abandoned the *Work*,
 whichever is earlier, and
  - .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.2.6.

## GC 8.3 RETENTION OF RIGHTS

- 8.3.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notice in Writing* required under Part 8 of the General Conditions – DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.3 of GC 8.1 – AUTHORITY OF THE CONSTRUCTION MANAGER AND THE CONSULTANT.
- 8.3.2 Nothing in Part 8 of the General Conditions – DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Project* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.2.6 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

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## PART 9 PROTECTION OF PERSONS AND PROPERTY

### GC 9.1 PROTECTION OF WORK AND PROPERTY

- 9.1.1 The *Trade Contractor* shall protect the *Project* and the *Owner's* property and property adjacent to the *Place of the Project* from damage which may arise as the result of the *Trade Contractor's* operations under the *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Contract Documents*; or
  - .2 acts or omissions by the *Owner*, the *Construction Manager*, the *Consultant*, other contractors, their agents and employees.
- 9.1.2 Before commencing any *Work*, the *Trade Contractor* shall ~~determine the location of all underground utilities and structures~~ indicated in the *Contract Documents* or that are reasonably apparent in an inspection of the *Place of the Project*.
- 9.1.3 Should the *Trade Contractor* in the performance of the *Contract* damage the *Project*, the *Owner's* property or property adjacent to the *Place of the Project*, the *Trade Contractor* shall be responsible for making good of such damage at the *Trade Contractor's* expense.
- 9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Trade Contractor* is not responsible, as provided in paragraph 9.1.1, the *Trade Contractor* shall make good such damage to the *Work* and, if the *Construction Manager* so directs, to the *Owner's* property. The *Contract Price* and *Contract Time* shall be adjusted as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER, and GC 6.3 – CHANGE DIRECTIVE.

### GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- 9.2.1 For the purposes of applicable legislation related to toxic and hazardous substances, the *Owner* shall be deemed to have control and management of the *Place of the Project* with respect to existing conditions.
- 9.2.2 Prior to the *Trade Contractor* commencing the *Work*, the *Owner* shall,
- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Project*, and
  - .2 provide the *Construction Manager*, the *Consultant* and the *Trade Contractor* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substance exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Project* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Project* prior to the *Trade Contractor* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Project*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Project* prior to the *Trade Contractor* commencing the *Work*.
- 9.2.5 If the *Trade Contractor*
- .1 encounters toxic or hazardous substances at the *Place of the Project*, or
  - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Project*, which were not brought to the *Place of the Project* by the *Trade Contractor* or anyone for whom the *Trade Contractor* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Trade Contractor* shall
  - .3 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substance exceeds any applicable time weighted levels prescribed by applicable legislation at the *Place of the Project*, and
  - .4 immediately report the circumstances to the *Construction Manager*, the *Owner* and the *Consultant* in writing.
- 9.2.6 If the *Owner* and *Trade Contractor* do not agree on the existence, significance of, or whether the toxic or hazardous substances were brought onto the *Place of the Project* by the *Trade Contractor* or anyone for whom the *Trade Contractor* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner*, the *Trade Contractor* and the *Construction Manager*.

- 9.2.7 If the *Owner* and *Trade Contractor* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the *Place of the Project* by the *Trade Contractor* or anyone for whom the *Trade Contractor* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
- .1 take all steps as required under paragraph 9.2.4;
  - .2 reimburse the *Trade Contractor* for the costs of all steps taken pursuant to paragraph 9.2.5;
  - .3 extend the *Contract Time* for such reasonable time as the *Construction Manager* may recommend in consultation with the *Owner*, the *Trade Contractor* and the expert referred to in 9.2.6 and reimburse the *Trade Contractor* for reasonable costs incurred as a result of the delay; and
  - .4 indemnify the *Trade Contractor* as required by paragraph GC 12.1 – INDEMNIFICATION
- 9.2.8 If the *Owner* and *Trade Contractor* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the *Place of the Project* by the *Trade Contractor* or anyone for whom the *Trade Contractor* is responsible, the *Trade Contractor* shall promptly at the *Trade Contractor's* own expense:
- .1 take all necessary steps in accordance with applicable legislation in force at the *Place of the Project*, to safely remove and dispose the toxic or hazardous substances;
  - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Project* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
  - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
  - .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.
- 9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

### GC 9.3 ARTIFACTS AND FOSSILS

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place of the Project* shall, as between the *Owner* and the *Trade Contractor*, be deemed to be the absolute property of the *Owner*.
- 9.3.2 The *Trade Contractor* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Construction Manager* upon discovery of such items.
- 9.3.3 The *Construction Manager* will investigate the impact on the *Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Trade Contractor's* cost or time to perform the *Work*, the *Owner*, through the *Construction Manager*, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 – CHANGE ORDER or GC 6.3 – CHANGE DIRECTIVE.

### GC 9.4 CONSTRUCTION SAFETY

- 9.4.1 The *Trade Contractor* shall:
- .1 be responsible for construction health and safety relating to the *Work* at the *Place of the Project* in compliance with the rules, regulations and practices required by the applicable construction health and safety legislation;
  - .2 be responsible for establishing, initiating, maintaining, and supervising all health and safety precautions and programs in connection with the performance of the *Work*; and
  - .3 comply with all health and safety precautions and programs established at the *Place of the Project*.
- 9.4.2 The *Owner* shall be responsible for construction health and safety at the *Place of the Project* in compliance with the rules, regulations and practices required by the applicable construction health and safety legislation.
- 9.4.3 The *Construction Manager* will:
- .1 establish, initiate, maintain, and supervise the health and safety precautions and programs required to be put in place at the *Place of the Project*; and
  - .2 review with the *Owner* the *Trade Contractor's* health and safety program for compliance.

## GC 9.5 MOULD

- 9.5.1 If the *Trade Contractor*, the *Construction Manager*, the *Consultant*, or the *Owner* observes or reasonably suspects the presence of mould at the *Place of the Project*, the remediation of which is not expressly part of the *Work*,
- .1 the observing party shall promptly report the circumstances to the other parties in writing, and
  - .2 the *Trade Contractor* shall promptly take all reasonable steps, including stopping the *Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould, and
  - .3 if the *Owner* and the *Trade Contractor* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Trade Contractor*.
- 9.5.2 If the *Owner* and the *Trade Contractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the *Trade Contractor's* operations under the *Contract*, the *Trade Contractor* shall promptly, at the *Trade Contractor's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
  - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Project* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
  - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.5.1.3, and
  - .4 indemnify the *Owner* as required by GC 12.1 – INDEMNIFICATION.
- 9.5.3 If the *Owner* and *Trade Contractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the *Trade Contractor's* operations under the *Contract*, the *Owner* shall promptly, at the *Owner's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
  - .2 reimburse the *Trade Contractor* for the cost of taking the steps under paragraph 9.5.1.2 and making good any damage to the *Work* as provided in paragraph 9.1.4 of GC 9.1 – PROTECTION OF WORK AND PROPERTY, and
  - .3 extend the *Contract Time* for such reasonable time as the *Construction Manager* may recommend in consultation with the *Trade Contractor* and the expert referred to in paragraph 9.5.1.3 and reimburse the *Trade Contractor* for reasonable costs incurred as a result of the delay, and
  - .4 indemnify the *Trade Contractor* as required by GC 12.1 – INDEMNIFICATION.
- 9.5.4 If either party does not accept the expert's finding under paragraph 9.5.1.3, the disagreement shall be settled in accordance with Part 8 of the General Conditions – DISPUTE RESOLUTION: If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.2 or 9.5.3, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided by GC 9.5 – MOULD.

## PART 10 GOVERNING REGULATIONS

### GC 10.1 TAXES AND DUTIES

- 10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the bid closing except for *Value Added Taxes* payable by the *Owner* to the *Trade Contractor* as stipulated in Article A-4 of the Agreement – CONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the *Trade Contractor* due to changes in such included taxes and duties after the time of the bid closing shall increase or decrease the *Contract Price* accordingly.

### GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Project* shall govern the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or for which the *Contract Documents* specify as the responsibility of the *Trade Contractor*.
- 10.2.3 The *Trade Contractor* shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the *Work* and customarily obtained by contractors in the jurisdiction of the *Place of the Project* after the issuance of the building permit. The *Contract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.

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- 10.2.4 The *Trade Contractor* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety.
- 10.2.5 The *Trade Contractor* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Trade Contractor* shall notify the *Construction Manager* in writing requesting direction immediately upon such variance or change becoming known. The *Owner*, through the *Construction Manager*, will issue the changes required to the *Contract Documents* as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 – CHANGE ORDER and GC 6.3 – CHANGE DIRECTIVE.
- 10.2.6 If the *Trade Contractor* fails to advise the *Construction Manager* in writing, fails to obtain direction as required in paragraph 10.2.5, and performs work knowing it to be contrary to any laws, ordinances, rules, regulations or codes, the *Trade Contractor* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.
- 10.2.7 If, subsequent to the time of bid closing, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the *Work*, either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

### GC 10.3 PATENT FEES

- 10.3.1 The *Trade Contractor* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The *Trade Contractor* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Trade Contractor's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Trade Contractor* or anyone for whose acts the *Trade Contractor* may be liable.
- 10.3.2 The *Owner* shall hold the *Trade Contractor* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Trade Contractor's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, or any model, plan or design which was supplied to the *Trade Contractor* as part of the *Contract*.

### GC 10.4 WORKERS' COMPENSATION

- 10.4.1 Prior to commencing the *Work*, and again with the *Trade Contractor's* application for payment of the holdback amount following *Substantial Performance of the Work*, and again with the *Contractor's* application for final payment, the *Trade Contractor* shall provide evidence of compliance with workers' compensation legislation at the *Place of the Project*, including payments due thereunder.
- 10.4.2 At any time during the term of the *Contract*, when requested by the *Construction Manager*, the *Trade Contractor* shall provide such evidence of compliance with workers' compensation legislation at the *Place of the Project* by the *Trade Contractor* and any *Trade Subcontractors*.

## PART 11 INSURANCE AND CONTRACT SECURITY

### GC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of GC 12.1 – INDEMNIFICATION, the *Trade Contractor* shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 – INSURANCE REQUIREMENTS in effect at the time of bid closing except as hereinafter provided:
1. Automobile Liability Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*;
  2. Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the *Work*; and
  3. Contractors' Equipment Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*.

- 11.1.2 If the *Trade Contractor* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence to the *Trade Contractor*, the *Construction Manager* and the *Consultant*. The *Trade Contractor* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the cost from any amount which is due or may become due to the *Trade Contractor*.
- 11.1.3 The *Owner* shall obtain, maintain and pay for 'wrap-up' general liability insurance in the joint names of the *Owner*, the *Construction Manager*, the *Consultant* and the *Trade Contractor* with limits of not less than \$10,000,000 per occurrence and a deductible not more than \$10,000. The insurance coverage shall be primary to all other insurance policies and shall not be substantially less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320, except for liability arising from damage to the *Project* during construction, which shall be limited to the completed operations period. The insurance shall be maintained from the date of commencement of the *Project* until 90 calendar days after the *Project In-Use Date*. The *Owner* is responsible to provide coverage for completed operations hazards from the *Project In-Use Date* for a period of 2 year. The *Trade Contractor* shall then provide, maintain and pay for liability insurance coverage for completed operations hazards with limits of not less than \$5,000,000 per occurrence and a deductible not more than \$5,000 on an ongoing basis for a further period of 4 years.
- 11.1.4 The *Owner* shall provide, maintain and pay for the following insurance coverages:
- .1 "Broad form" property insurance in the joint names of the *Owner*, the *Trade Contractor*, the *Construction Manager*, and the *Consultant*. The policy shall have limits of not less than the sum of 1.1 times *Contract Price*, and the full value, as stated in the *Contract*, of products and design services that are specified to be provided by the *Owner* for incorporation into the *Work*, with a deductible not exceeding \$10,000. The insurance coverage shall not be less than the insurance provided by the latest edition of IBC Forms 4042 and 4047 or their equivalent replacement. In addition to the exclusions identified in the latest edition of IBC forms 4042 and 4047, the *Owner* is not required to provide insurance coverage for Asbestos, Cyber Risk, Mould, or Terrorism. The "Broad form" property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
    - (1) 10 calendar days after the date of *Substantial Performance of the Work*;
    - (2) on the commencement of use or occupancy of any part or section of *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*;
    - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
  - .2 Boiler and machinery insurance in the joint names of the *Owner*, the *Trade Contractor*, the *Construction Manager*, and the *Consultant*. The insurance shall have limits of not less than the replacement value of the permanent or temporary boilers and pressure vessels, and other insurable objects forming part of the *Work*. The insurance coverage shall not be less than the insurance provided by a comprehensive boiler and machinery policy. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Substantial Performance of the Work*.
  - .3 The "Broad form" property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner*, the *Trade Contractor*, the *Construction Manager*, and the *Consultant* as their respective interests may appear. In the event of loss or damage:
    - (1) the *Construction Manager* shall act on behalf of the *Owner*, the *Trade Contractor* and the *Consultant* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Trade Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Trade Contractor* shall be entitled to such reasonable extension of *Contract Time* relative to the extent of the loss or damage as the *Construction Manager* may recommend in consultation with the *Trade Contractor*;
    - (2) the *Trade Contractor* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions. In addition the *Trade Contractor* shall be entitled to receive from the payments made by the insurer the amount of the *Trade Contractor's* interest in the restoration of the *Work*; and
    - (3) to the *Work* arising from the work of the *Owner*, the *Owner's* own forces or another contractor, in accordance with the *Owner's* obligations under the provisions relating to construction by *Owner* or other contractors, shall pay the *Trade Contractor* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions.

- 11.1.5 Prior to commencement of the *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance,
- .1 the *Trade Contractor* shall promptly provide the *Construction Manager* with confirmation of coverage under the policies specified in paragraph 11.1.1 and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Work*; and
  - .2 the *Owner*, through the *Construction Manager*, shall promptly provide the *Trade Contractor* with confirmation of coverage under the policies specified in paragraphs 11.1.3 and 11.1.4 and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Work*.
- 11.1.6 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the *Contract*.
- 11.1.7 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Project*.
- 11.1.8 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the insurance policy becoming due for renewal, and record any agreement in a *Change Order*.
- 11.1.9 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, either party may request the increased coverage by way of a *Change Order*.
- 11.1.10 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to the revision of CCDC 41 – INSURANCE REQUIREMENTS.

## GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Trade Contractor* shall, prior to commencement of the *Work* or within the specified time, provide to the *Construction Manager* any *Contract* security specified in the *Contract Documents*.
- 11.2.2 If the *Contract Documents* require surety bonds to be provided, such bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the *Place of the Project* and shall be maintained in good standing until the fulfillment of the *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

## PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

### GC 12.1 INDEMNIFICATION

- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Owner* and the *Trade Contractor* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to, their involvement as parties to this *Contract*, provided such claims are:
- .1 caused by:
    - (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
    - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and
  - .2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.4.2.2 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Project*.
- The parties expressly waive the right to indemnify for claims other than those provided for in this *Contract*.
- 12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:
- .1 In respect to losses suffered by the *Owner* and the *Trade Contractor* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the insurance limit for the loss so covered in effect at the time of bid closing.
  - .2 In respect to losses suffered by the *Owner* and the *Trade Contractor* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 – CONTRACT PRICE or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.

- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.
- 12.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.
- 12.1.4 The *Owner* and the *Trade Contractor* shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.
- 12.1.5 The *Owner* shall indemnify and hold harmless the *Trade Contractor* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:
- .1 as described in paragraph 10.3.2 of GC 10.3 – PATENT FEES, and
  - .2 arising out of the *Trade Contractor's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Project*.
- 12.1.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Trade Contractor*:
- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known;
  - .2 should either party be required, as a result of its obligation to indemnify the other, pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

## GC 12.2 WAIVER OF CLAIMS

- 12.2.1 Subject to any lien legislation applicable to the *Place of the Project*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*, the *Trade Contractor* waives and releases the *Owner* from all claims which the *Trade Contractor* has or reasonably ought to have knowledge of that could be advanced by the *Trade Contractor* against the *Owner* arising from the *Trade Contractor's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Owner* from the *Trade Contractor* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*;
  - .2 indemnification for claims advanced against the *Trade Contractor* by third parties for which a right of indemnification may be asserted by the *Trade Contractor* against the *Owner* pursuant to the provisions of this *Contract*;
  - .3 claims for which a right of indemnity could be asserted by the *Trade Contractor* pursuant to the provisions of paragraphs 12.1.4 or 12.1.5 of GC 12.1 – INDEMNIFICATION; and
  - .4 claims resulting from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.2 The *Trade Contractor* waives and releases the *Owner* from all claims referenced in paragraph 12.2.1.4 except for those referred in paragraphs 12.2.1.2 and 12.2.1.3 and claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Trade Contractor* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.3 Subject to any lien legislation applicable to the *Place of the Project*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*, the *Owner* waives and releases the *Trade Contractor* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Trade Contractor* arising from the *Owner's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Trade Contractor* from the *Owner* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*;
  - .2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Trade Contractor* pursuant to the provisions of this *Contract*;

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- .3 claims for which a right of indemnity could be asserted by the *Owner* against the *Trade Contractor* pursuant to the provisions of paragraph 12.1.4 of GC 12.1 – INDEMNIFICATION;
  - .4 damages arising from the *Trade Contractor*'s actions which result in substantial defects or deficiencies in the *Work*. "Substantial defects or deficiencies" mean those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*;
  - .5 claims arising pursuant to GC 12.3 – WARRANTY; and
  - .6 claims arising from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.4 The *Owner* waives and releases the *Trade Contractor* from all claims referred to in paragraph 12.2.3.4 except claims for which *Notice in Writing* of claim has been received by the *Trade Contractor* from the *Owner* within a period of six years from the date of *Substantial Performance of the Work* should any limitation statute of the Province or Territory of the *Place of the Project* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:
- .1 any limitation statute of the Province or Territory of the *Place of the Project*; or
  - .2 the Civil Code of Quebec, if the *Place of the Project* is the Province of Quebec.
- 12.2.5 The *Owner* waives and releases the *Trade Contractor* from all claims referenced in paragraph 12.2.3.6 except for those referred in paragraph 12.2.3.2, 12.2.3.3 and those arising under GC 12.3 – WARRANTY and claims for which *Notice in Writing* has been received by the *Trade Contractor* from the *Owner* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.6 *Notice in Writing* of claim as provided for in GC 12.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 12.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- .1 a clear and unequivocal statement of the intention to claim;
  - .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
  - .3 a statement of the estimated quantum of the claim.
- 12.2.7 The party giving *Notice in Writing* of claim as provided for in GC 12.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 12.2.8 Where the event or series of events giving rise to a claim made under paragraphs 12.2.1 or 12.2.3 has a continuing effect, the detailed account submitted under paragraph 12.2.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 12.2.9 If a *Notice in Writing* of claim pursuant to paragraph 12.2.1.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.3.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*.
- 12.2.10 If a *Notice in Writing* of claim pursuant to paragraph 12.2.3.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.1.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Project*.

### GC 12.3 WARRANTY

- 12.3.1 Except for extended warranties as described in paragraph 12.3.7, the warranty period under the *Contract* is one year from the later of the date of *Substantial Performance of the Work* and the *Project In-Use Date*.
- 12.3.2 The *Trade Contractor* shall be responsible for the proper performance of the *Work* to the extent that the design and *Contract Documents* permit such performance.
- 12.3.3 The *Trade Contractor* shall submit to the *Construction Manager* for the *Owner*'s acceptance all written warranties and related documents required by the *Contract Documents*.
- 12.3.4 The *Owner*, through the *Construction Manager*, shall promptly give the *Trade Contractor* *Notice in Writing* of observed defects and deficiencies that occur during the one year warranty period.

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- 12.3.5 Subject to paragraph 12.3.2, the *Trade Contractor* shall correct promptly, at the *Trade Contractor's* expense, defects or deficiencies in the *Work* which appear prior to and during the one year warranty period.
- 12.3.6 The *Trade Contractor* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.5.
- 12.3.7 Any extended warranties beyond the one year warranty period as described in paragraph 12.3.1, shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Trade Contractor's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.



## SUPPLEMENTARY CONDITIONS

The Standard Construction Document for Stipulated Price Contract between *Owner* and *Trade Contractor* for Construction Management Projects form CCDC 17, 2010, English version, consisting of the Agreement Between *Owner* and *Trade Contractor*, Definitions, and General Conditions of the Contract, Parts 1 to 12 inclusive, governing same is hereby made part of these *Contract Documents*, with the following amendments, additions and modifications. Where these amendments, additions, and modifications specifically reference a change to the Agreement, Definitions, or General Conditions, these amendments, additions and modifications shall govern.

### AGREEMENT

#### SC1.1 Article A-1 The Work

SC1.1.1 At the end of the last sentence of Article A-1 paragraph 1.1, delete the following: "for which the *Construction Manager\* / Consultant\** is acting as the *Payment Certifier*, and (\*Strike out inapplicable term.)".

SC1.1.2 Delete Paragraphs 1.3.2 and 1.3.3 in their entirety.

#### SC1.2 Article A-4 Contract Price

SC1.2.1 At paragraph 4.1 delete, "The *Contract Price*, which excludes *Value Added Taxes*, is:" and replace with, "The *Contract Price* including taxes, duties, tariffs and royalties related to the performance of the *Work* and excluding *Value Added Taxes* is:"

#### SC1.3 Article A-5 Payment

SC1.3.1 Delete Paragraphs 5.1.1 and 5.1.3 in their entirety.

SC1.3.2 Add new paragraph 5.1.1 as follows:

"5.1.1 make progress payments to the *Trade Contractor* on account of the *Contract Price* when due in the amount approved by the *Owner* together with such *Value Added Taxes* as may be applicable to such payment, and

SC1.3.3 Add new paragraph 5.1.3 as follows:

"5.1.3 upon the completion of the *Work* as agreed by the *Construction Manager* and the *Consultant*, pay to the *Trade Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.

SC1.3.4 Delete paragraph 5.3.1(1) and 5.3.1(2) in their entirety.

SC1.3.5 Add new paragraph 5.3.1(1) as follows:

"5.3.1(1) 0% for the first 15 days.

SC1.3.6 Add new paragraph 5.3.1(2) as follows:

"5.3.1(2) 1% after the first 15 days.

SC1.3.7 At the end of paragraph 5.3.1 delete the following: "Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by (Insert name of chartered lending institution whose prime rate is to be used) for prime business loans as it may change from time to time.



**SC1.4 Article A-6 Communication**

SC1.4.1 At paragraph 6.1 add, "or" before "the *Consultant*" and delete, "or the Payment Certifier".

SC1.4.2 At paragraph 6.2.1 delete, "the *Payment Certifier* and".

**DEFINITIONS****SC2.1 Payment Certifier**

SC2.1.1 Delete the definition for "Payment Certifier" in its entirety.

SC2.1.2 Add new definition for "Payment Certifier" as follows:

"A *Payment Certifier* has not been and will not be assigned to this Project."

**SC2.2 Project In Use Date**

SC2.2.1 Delete the definition for "Project In-Use Date" in its entirety.

SC2.2.2 Add new definition for "Project In-Use Date" as follows:

"*Project In-Use Date* shall have been reached when the Project is deemed Substantially Complete excluding any areas for which the design is not complete. The *Project In-Use Date* shall be confirmed in writing by the *Construction Manager* in consultation with the *Consultant* and the *Owner*."

**SC2.3 Quality Assurance**

SC2.3 Add new definition for "Quality Assurance" as follows:

"**Quality Assurance** is the process and procedures put in place to execute the *Work* that systematically monitors, detects, corrects and ensures that quality standards are being met."

**SC2.4 Quality Control**

SC2.4 Add new definition for "Quality Control" as follows:

"**Quality Control** is the process put in place to review the *Work* as it is being executed and completed to ensure that quality standards are being met."

**GENERAL CONDITIONS****SC3 Part 1 General Provisions**

SC3.1 At paragraph 1.3.2 delete, "*Payment Certifier*,"

**SC4 Part 2 Administration of the Contract**

SC4.1 Delete paragraph 2.1.4 in its entirety.

SC4.2 Add new paragraph 2.4.4 as follows:

"2.4.4 The *Trade Contractor* will be responsible for all additional testing and inspections related to the defective work and correction of same.

**SC5 Part 3 Execution of the Work**



- SC5.1 Add new paragraph 3.1.3 as follows:  
"3.1.3 This *Trade Contractor* shall secure the area of its work to ensure no hazard to other trades people, property, equipment or other work."
- SC5.2 Add new paragraph 3.1.4 as follows:  
"3.1.4 This *Trade Contractor* shall rectify immediately damage caused by this *Trade Contractor* to the work of others, temporary services and facilities, fencing, curbs, trees, sidewalks, roadways, equipment, property or neighboring properties."
- SC5.3 Add new paragraph 3.1.5 as follows:  
"3.1.5 This *Trade Contractor* will be responsible to protect the *Work* during the course of the construction."
- SC5.4 Add new paragraph 3.1.6 as follows:  
"3.1.6 Only major benchmarks and gridlines will be provided by the *Construction Manager*. All required extension of layout and grades to complete the *Work* are the responsibility of the *Trade Contractor*"
- SC5.5 Add to the end of 3.3.1, "When using construction equipment (including but not limited to swing stages), the *Trade Contractor* shall submit to the *Owner* a certificate indicating the initial set-up as well as any subsequent set-ups and the equipment used is in conformance with the Occupational Health and Safety Act and related regulations for a construction project."
- SC5.6 Add new paragraph 3.3.4 as follows:  
"3.3.4 This *Trade Contractor* shall be responsible for providing labour to load, off-load and move their own equipment and materials as needed to complete the *Work*."
- SC5.7 Add new paragraph 3.3.5 as follows:  
"3.3.5 A Man and Material Hoist will be provided by the *Owner* for use by all trade contractors working on the *Project*. The *Trade Contractor* will have use of the Man and Material Hoist as arranged through the *Construction Manager*. Deliveries will be allowed on a reserved basis coordinated by the *Construction Manager*. At times the hoist will be running beyond normal working hours to accommodate the need. The *Trade Contractor* will be expected to coordinate the delivery times with the *Construction Manager* and will not be compensated for premium time shifts if the deliveries are accepted or required outside normal working hours."
- SC5.8 Add new paragraph 3.3.6 as follows:  
"3.3.6 The *Trade Contractor* is responsible for its own hoisting. Should hoisting be required prior to the installation of the Man and Material Hoist or after the hoist is dismantled it will be the *Trade Contractors* responsibility to hoist its equipment and/or material using other means. The *Trade Contractor* is responsible to advise the *Construction Manager* of any special hoisting procedures."
- SC5.9 Add new paragraph 3.3.7 as follows  
"3.3.7 Should the *Trade Contractor* require the use of the Tower Crane during the timeframe that it is installed and operating on the *Project* then the *Trade Contractor* will make arrangements through the *Construction Manager* for such use. Use of the Tower Crane will be at the discretion of the formwork contractor who will provide the Tower Crane at times that will not interfere with the progress of their work. The *Trade Contractor* shall pay all costs and shall provide all insurance required for use of the Tower Crane. In the event the hoisting by the Tower Crane is outside normal working hours the *Trade Contractor* will not be compensated for premium time shifts."

- SC5.10 Add new paragraph 3.4.2 as follows:  
"3.4.2 The *Trade Contractor* is responsible for ensuring that it is working with the most current revision of all drawings."
- SC5.11 Add new paragraph 3.4.3 as follows:  
"3.4.3 The *Trade Contractor* is to coordinate the installation of its *Work* with all *Contracts Documents* (i.e. Architectural, Interior Design, Landscape, Structural, Mechanical and Electrical drawings and specifications) ensuring the installation of the *Work* will not adversely impact the installation of the work of other trades. Where a conflict is found, the *Trade Contractor* will advise the *Construction Manager* immediately and will not proceed with the installation of the *Work* until the conflict is resolved and direction is given through the *Construction Manager*. Should the *Trade Contractor* install portions of the *Work* that later prove to impede the work of other trades then the *Trade Contractor* will relocate the portions of the *Work* that are interfering at the *Trade Contractors* cost."
- SC5.12 At 3.5.3.2 delete, "monthly" and replace with, "weekly".
- SC5.13 Add new paragraph 3.5.3.4 as follows:  
"3.5.3.4 provide all necessary material, manpower, equipment, supervision and the like to complete the work as per the Project Schedule."
- SC5.14 Add new paragraph 3.5.3.5 as follows:  
"3.5.3.5 notify the *Construction Manager* within 3 *Working Days* if there is a delay to the Project Schedule. If the *Trade Contractor* is the cause for the delay then the *Trade Contractor* will develop a recovery plan within 3 *Working Days*. The *Trade Contractor's* recovery plan will include all means necessary to regain the lost time including but not limited to additional manpower, working overtime, working weekends, additional equipment and the like."
- SC5.15 Add new paragraph 3.5.4 as follows:  
"3.5.4 The *Construction Manager* may reasonably rely upon the Project Schedule and the *Trade Contractor* acknowledges that the *Owner* may commence dealings with any third-party, including the procurement of owner-furnished materials, execution of leases and contracts, obtaining financing, hiring and training of employees, and advertising or marketing, or selling the improvements at the project, based upon the Schedule."
- SC5.16 Add new paragraph 3.5.5 as follows:  
"3.5.5 The *Trade Contractor's* construction schedule noted in 3.5.3.1 will include the procurement of all materials and equipment."
- SC5.17 Add new paragraph 3.5.6 as follows:  
"3.5.6 The *Construction Manager's* analysis of the *Trade Contractors* construction schedule shall not relieve the *Trade Contractor* of any obligation for the performance of the *Work*."
- SC5.18 At 3.7.6 delete, "certified" and replace with, "approved"
- SC5.19 Add new paragraph 3.8.4 as follows:  
"3.8.4 The *Owner* will provide heat and lighting to the minimum required by Ministry of Labour. This *Trade Contractor* is responsible for any additional supplementary spot heaters and/or task lighting as required to complete the *Work*."
- SC5.20 Add new paragraph 3.8.5 as follows:  
"3.8.5 The *Owner* will provide 120V, 15A power panels allowing the *Trade Contractor* to operate power tools at any location in the building using a 100 foot extension cord."

- SC5.21 Add new paragraph 3.8.6 as follows:  
 "3.8.6 The *Project* will be constructed by labour working in an "open-shop" environment, union or non-union. Parties causing disruption to the progress of the work will be dismissed from the project and held responsible for any damages caused."
- SC5.22 Add new paragraph 3.9.2 as follows:  
 "3.9.2 The *Trade Contractor* shall maintain current at all times, as-built drawings for the *Work*. The drawings are to be kept on site in a safe and secure lock up. Provide copies of the as-built drawings to the *Construction Manager* immediately upon request for review by the *Construction Manager*, or the *Consultant*. Upon completion of the *Work* submit 3 sets of the as-built drawings to the *Construction Manager* for review and approval."
- SC5.23 At the end of paragraph 3.10.2 add, "Shop Drawings are to be submitted to the *Construction Manager* within 4 weeks of award of *Contract* or in such instances where submission of the shop drawings within 4 weeks of award is not possible, provide a schedule for the submission of shop drawings acceptable to the *Construction Manager* within 4 weeks of award. The *Trade Contractor* is to provide 8 copies of each submission of which 1 will be returned to the *Trade Contractor* upon completion of review."
- SC5.24 Add new paragraph 3.10.14 as follows:  
 "3.10.14 The *Trade Contractor* is responsible to confirm all dimensions on site prior to fabrication and/or ordering of materials to ensure proper fit of installed product. The review by the *Construction Manager* or the *Consultant* does not relieve the *Trade Contractors* responsibility in this regard."
- SC5.25 Add new paragraph 3.13.4 as follows:  
 "3.13.4 The *Trade Contractor* is responsible for the costs and the carrying out for dust control related to the *Work* of this *Trade Contractor* by whatever means necessary."
- SC5.26 Add new paragraph 3.13.5 as follows:  
 "3.13.5 The *Trade Contractor* is responsible for street cleaning related to its *Work*."
- SC5.27 Add new paragraph 3.13.6 as follows:  
 "3.13.6 The *Trade Contractor* is responsible to clean up all of its debris on a daily basis, and to dump the same in the appropriate container(s) supplied by the *Owner*. ~~In addition one (1) worker from each ten (10) people employed or pro-rated portion thereof, shall be assigned to the *Construction Manager's* clean-up crew one (1) day per week for the duration of the *Trade Contractor's Work* period.~~ Should the *Trade Contractor* fail or refuse to clean their debris, the *Construction Manager* shall clean the debris for the *Trade Contractor* at the *Trade Contractor's* expense. All garbage is to be packaged and separated into appropriate containers as directed by the *Construction Manager* or the requirements of the Works Department and all Municipal authorities having jurisdiction (i.e., Ministry of the Environment and Energy). The complete disposal cost for mixed or contaminated loads shall be back charged to the offending *Trade Contractor*."
- SC5.28 Add new section "GC 3.14 Quality Control and Quality Assurance"
- SC5.29 Add new paragraph 3.14.1 as follows:  
 "3.14.1 The *Trade Contractor* is to submit their *Quality Assurance* program for review and acceptance by the *Construction Manager*."
- SC5.30 Add new paragraph 3.14.2 as follows:

"3.14.2 The *Trade Contractor* is to submit their *Quality Control* program for review and acceptance by the *Construction Manager*. The *Trade Contractors Quality Control* program will be in addition to any *Quality Control* being performed by the *Construction Manager, Consultant* or *Owner*."

**SC6 Part 4 Allowances**

Intentionally left blank.

**SC7 Part 5 Payment**

- SC7.1 Delete "GC 5.1 Financing Information Required of the Owner", in its Entirety including 5.1.1 and 5.1.2.
- SC7.2 At paragraph 5.2.4 delete, "15 calendar days" and replace with, "20 working days".
- SC7.3 Add to the end of paragraph 5.2.4, "The schedule of values will be subject to approval by the *Construction Manager*."
- SC7.4 Delete paragraph 5.2.5 in its entirety.
- SC7.5 Add new paragraph 5.2.6.3 as follows:  
"5.2.6.3 with each application a valid WSIB clearance certificate."
- SC7.6 Add new paragraph 5.2.6.4 as follows:  
"5.2.6.4 with each application a copy of all *Change Orders* for which the *Trade Contractor* is claiming a payment for."
- SC7.7 Add new paragraph 5.2.6.5 as follows:  
"5.2.6.5 with each application a copy of approval from the *Construction Manger's* site staff."
- SC7.8 Add new paragraph 5.2.6.6 as follows:  
"5.2.6.6 original documents."
- SC7.9 Delete paragraph 5.2.7 in its entirety.
- SC7.10 Add new paragraph 5.2.7 as follows:  
"5.2.7 Applications for payment for *Products* delivered to the *Place of the Project* but not yet incorporated into the *Work* will be at the discretion of the *Owner*. If accepted by the *Owner* the *Trade Contractor* will provide such evidence as the *Construction Manager* and *Owner* may require to establish the value and delivery of the *Products*. In no event will *Products* be permitted to be delivered to the *Project* when the installation is not scheduled to begin for more than 20 working days from the date of the delivery."
- SC7.11 Delete paragraph 5.3.1 in its entirety including 5.3.1.1, 5.3.1.2 and 5.3.1.3.
- SC7.12 Add new paragraph 5.3.1 as follows:  
"5.3.1 The *Trade Contractor* must submit the application for payment to the *Construction Manager's* office at 3755 Victoria Park Avenue, Toronto, Ontario, M1W 3Z4 by the 20<sup>th</sup> day of the month including all original documents required as per GC 5.2. The application for payment will reflect all work completed up to and including the 20<sup>th</sup> day of that month."

- SC7.13 Add new paragraph 5.3.2 as follows:  
 "5.3.2 The *Construction Manager* will review and accept the values being claimed in the application for payment during the week prior to the application for payment being submitted as noted in 5.3.1."
- SC7.14 Add new paragraph 5.3.3 as follows:  
 "5.3.3 The Owner's approval will then be complete by the 15<sup>th</sup> of the first month following the application for payment being submitted as noted in 5.3.1. Should adjustments be required the Trade Contractor will be Notified."
- SC7.15 Add new paragraph 5.3.4 as follows:  
 "5.3.4 The payment will be processed by the 15th day of the second month following the application for payment being submitted as noted in 5.3.1."
- SC7.16 Add new paragraph 5.3.5 as follows:  
 "5.3.5 Final Payment shall not become due until all required documentation, such as guarantees, warranties, maintenance manuals and as-built record drawings have been delivered to the *Construction Manager*."
- SC7.17 At paragraph 5.4.2 delete, "whichever of them is the *Payment Certifier*, acting in that capacity,"
- SC7.18 Delete paragraph 5.5.1 and 5.5.2 in their entirety.
- SC7.19 Add new paragraph 5.5.1 as follows: Completion of Trade Contractor's work  
 "5.5.1 After the *Construction Manager* confirms ~~the Substantial Performance of the Work~~, the Trade Contractor shall submit to the *Construction Manager* an application for payment of the holdback amount including a Form 6 Certificate of substantial performance as per the Construction Lien Act, proof of publication, CCDC 9A 'Statutory Declaration' and all documents required as per 5.2.6," AS  
a certificate for payment of the holdback amount and pay holdback and Construction Manager shall issue
- SC7.20 At paragraph 5.6.1 delete, "*Payment Certifier* has certified" and replace with, "*Construction Manager* and *Consultant* have confirmed" to Trade Contractor forthwith
- SC7.21 Delete paragraph 5.6.2 in its entirety. AS
- SC7.22 At the end of paragraph 5.7.2.1 add the following: " will advise the Trade Contractor in writing that the application is valid or give reasons why it is not valid."
- SC7.23 Delete paragraph 5.7.2.2 in its entirety.
- SC7.24 Delete paragraph 5.7.3 in its entirety.
- SC7.25 At paragraph 5.8.1 delete, "as Certified by the *Payment Certifier*" and delete, "the *Payment Certifier* determines."
- SC8 Part 6 Changes in the Work**
- SC8.1 Add new paragraph 6.2.3 as follows:  
 "6.2.3 When determining the adjustment to the *Contract Price* the *Trade Contractor* will be limited to the estimated costs as per the items identified in 6.3.6, 6.3.7, 6.3.8 and 6.3.14."

- SC8.2 Add new paragraph 6.2.4 as follows:  
 “6.2.4 The *Trade Contractor* shall provide a detail cost breakdown of the work within 10 days of receipt of the proposed change. Extensions to the 10 day period will only be granted upon written request. If the *Trade Contractor* fails to submit a cost for the proposed change in the work, the *Construction Manager*, *Owner* and/or the *Consultant* will make an assessment of the costs which will be final.
- SC8.3 Delete paragraph 6.3.6.3 in its entirety.
- SC8.4 Add new paragraph 6.3.6.3 as follows:  
 “6.3.6.3 The *Trade Contractor*’s percentage fee as noted in paragraph 6.3.6.1 shall be limited to 5% for overhead and 5% for profit.”
- SC8.5 Add new paragraph 6.3.14 as follows:  
 “6.3.14 Work performed by subcontractors or sub-subcontractors etc. will be subject to the same restrictions as the *Trade Contractor* when pricing the work of a *Change Order* or *Change Directive*.

**SC9 Part 7 Default Notice**

- SC9.1 At paragraph 7.1.4.1 delete the following: “provided the *Payment Certifier* has certified such cost to the *Owner* and the *Trade Contractor*”
- SC9.2 At paragraph 7.1.5.3 delete the following: “as certified by the *Payment Certifier*”
- SC9.3 Delete paragraphs 7.2.2, 7.2.3 and 7.2.4 in their entirety.

**SC10 Part 8 Dispute Resolution**

Intentionally left blank

**SC11 Part 9 Protection of Persons and Property**

- SC11.1 At paragraph 9.4.2 delete, “*Owner*” and replace with, “*Construction Manager*”.
- SC11.2 Add new paragraph 9.4.4 as follows:  
 “9.4.4 The *Owner* and *Construction Manager* have a safety program in place for the site. All *Trade Contractors/Suppliers* shall fully co-operate with the *Construction Manager* to implement the site safety program and comply with requirements of Occupational Health and Safety At R.S.O. 1990 c. O. 1 (as may be amended from time to time). All *Trade Contractors/Suppliers* are responsible for the safety of their employees, *Trade Contractors*, visitors, *Suppliers* and those for whom the *Trade Contractor’s Suppliers* are at law responsible and must ensure that proper safety equipment and procedures are used at all times. Regular meetings regarding safe work procedures will be held on site for all workers and will be organized by the *Construction Manager*. The *Trade Contractor/Supplier* shall fully indemnify the *Owner* and *Construction Manager* for all costs, damages and pay any and all fines levied against the *Owner* its Lender or any affiliated or related entities or their shareholders, officers, directors, employees or those for whom they are at law responsible resulting from the *Trade Contractor/Supplier*, it’s

employees, suppliers and those for whom the *Trade Contractor/Supplier* are at law responsible for failing to adhere to the Safety Requirements of all laws and authorities having jurisdiction. All *Trade Contractors/Suppliers* on this site will be required to have a written Health & Safety Policy according to the requirements of the Occupational Health & Safety Act R.S.O. 1190 c. 0. 1 (as may be amended from time to time) and must provide a copy to the Site Superintendent prior to starting any work on the site. All *Trade Contractors* are required to submit the following information regarding their Safety Program and accident experience: 1) Safety Policy and Programs; 2) Outline of Safety Training (i.e., W.H.M.I.S.); 3) CAD-7 Experience Rating Summary. The *Trade Contractor* shall be fully responsible for all acts of negligence committed by its personnel and for any accidents or damages caused as a result of such acts of negligence. The *Trade Contractor* shall provide the *Owner* and *Construction Manager* with copies of all Project Inspection Reports issued by the Ontario Ministry of Labour, Construction Health and Safety Branch. The *Trade Contractor* shall provide the *Owner* and *Construction Manager* with copies of all accident reports.”

SC11.3 Add new paragraph 9.4.5 as follows:

“9.4.5 The *Trade Contractor* will submit to the *Construction Manager* prior to starting the *Work* at the *Place of the Project* a signed copy of the Occupational Health and Safety Trade Contractor Agreement between the *Owner* and the *Trade Contractor* that was included in the Tender Package for the *Work*.”

#### SC12 Part 10 Governing Regulations

SC12.1 Add new paragraph 10.2.8 as follows:

“10.2.8 The *Trade Contractor* agrees to complete the *Work* in accordance with all applicable federal, provincial and municipal laws, regulations and codes and all regulations thereunder, amendments thereto or substitutions therefore, including, but not limited to the following:

- a. The Ontario Building Code;
- b. The National Building Code including all Supplements;
- c. Canada Mortgage and Housing Corporation Builders' Bulletins;
- d. Ontario Electrical Safety Code;
- e. Canada Plumbing Code;
- f. Residential Standards Canada;
- g. The National Housing Act R.S.C. 1985, Chap. N-11, as amended;
- h. The Occupational Health and Safety Act and Regulations for Construction Projects, Revised SO, 1990, Chapter 0.1m as amended, O. Reg. 213/91, as amended by O. Reg. 631/94, O. Reg. 143/99, 571/99, 145/00 and 527/00, R.R.O. 1990, Reg. 834;
- i. The Elevating Devices Act, R.S.O. 1980, Chapter 135, as amended;
- j. Workplace Safety and Insurance Act, 1997, SO, 1997, Chapter 16, Schedule A. and O. Reg. 562/99, 1101, 456/97, 175/98, 455/97, 259/92;
- k. The Construction Lien Act. S.O. 1983, as amended;
- l. The Tarion Warranty Corporation Construction Performance Guidelines, April 2, 2003;
- m. Tarion Warranty Corporation Regulations and its latest amendments and
- n. The Ontario New Home Warranties Plan Act
- o. In the event of any differences between two codes, two statutes or a statute and a code, the more stringent code or statute shall govern.

#### SC13 Part 11 Insurance

- SC13.1 Delete paragraph 11.1.1 in its entirety. Including paragraphs 11.1.1.1, 11.1.1.2 and 11.1.1.3
- SC13.2 Add new paragraph 11.1.1 as follows:  
 "11.1.1 Without restricting the generality of GC 12.1- INDEMNIFICATION, the *Trade Contractor* shall provide, maintain, and pay for the insurance coverages specified below. Unless otherwise stipulated, the duration of each insurance policy shall be from the date of commencement of the *Work* until the date of the final certificate for payment. Prior to commencement of the *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Trade Contractor* shall promptly provide the *Construction Manager* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements. The policies shall be in a form acceptable to the *Construction Manager* and endorsed to provide the *Construction Manager* with not less than 15 days notice in writing in advance of cancellation, change, or amendment restricting coverage."
- SC13.3 Add new paragraph 11.1.1.1 as follows:  
 "11.1.1.1 Automobile Liability Insurance:  
 Automobile liability insurance in respect of licensed vehicles shall have limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property, covering all licensed vehicles owned or leased by the *Trade Contractor*. Where the policy has been issued pursuant to a government operated automobile insurance system, the *Trade Contractor* shall provide the *Construction Manager* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Trade Contractor*."
- SC13.4 Add new paragraph 11.1.1.2 as follows:  
 "11.1.1.2 Aircraft and Watercraft Liability Insurance:  
 Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the *Work*, including use of additional premises, shall be subject to limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and limits of not less than \$5,000,000 for aircraft passenger hazard."
- SC13.5 Add new paragraph 11.1.1.3 as follows:  
 "11.1.1.3 *Trade Contractors'* Equipment Insurance:  
 "All Risk" contractors' equipment insurance covering construction machinery and equipment (including contractors building and equipment, the capital cost of any item which is not included in the cost of new construction) owned, rented, leased or used by the *Trade Contractor* for the performance of the *Work*, including boiler insurance on temporary boiler and pressure vessels. Such policies will not allow for subrogation claims against the *Owner* or *Construction Manager* or their employees."
- SC13.6 Delete paragraph 11.1.3 in its entirety.
- SC13.7 Add new paragraph 11.1.3 as follows:  
 "11.1.3 The *Owner* shall obtain, maintain and pay for "wrap-up" general liability insurance in the joint names of the *Owner*, the *Construction Manager*, the *Consultant*, and all *Trade Contractors*, and all subconsultants, and all trade subcontractors with a limit of not less than \$25,000,000 per occurrence and a deductible not more than \$25,000. The coverage shall be primary and non-contributing to all other insurance policies and shall not be substantially less than the insurance provided by IBC Form 2100, (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC form 2320, except for liability arising from damage to the *Project* during construction, which shall be limited to the completed operations period. The insurance shall be maintained from the date of



commencement of the *Project* until deficiency state at which point the *Owner* is responsible to provide coverage for completed operations hazards for a period of 3 years thereafter. In order to achieve the limit of insurance required the use of primary and excess liability policies is acceptable."

SC13.8 Delete paragraph 11.1.4.1 in its entirety.

SC13.9 Add new paragraph 11.1.4.1 as follows:

"11.1.4.1 The *Owner* shall obtain, maintain and pay for All Risk "broad form" property insurance including but not limited to the perils of flood, earthquake and sewer back-up in the joint names of the *Owner*, the *Owner's* Mortgagee, the *Construction Manager*, the *Consultant*, and all *Trade Contractors*. The policy shall have limits of not less the full replacement cost of the work including reoccurring soft costs subject however to limits of not less than 1.1 times the Construction Cost with a deductible not greater than \$25,000 except for the perils of sewer back-up, water damage, flood and earthquake. Such deductibles for sewer back-up, water damage and flood will not exceed \$50,000. Earthquake which will contain a deductible of not greater than 5% of the total values insured or \$100,000 whichever is greater. Loss if any will be payable to the *Owner*, the *Owner's* Mortgagee, the *Construction Manager*, the *Consultant*, and all *Trade Contractors* as their interest may appear. Providing the *Owner*, the *Owner's* Mortgagee, the *Construction Manager*, the *Consultant*, and all *Trade Contractors* will use the proceeds from any insurance to restore the work as nearly as possible to its condition before such loss or damage occurred. Such coverage will not include the replacement cost of any property not included in the capital cost of new construction. The All Risk "broad form" property insurance shall be provided from the date of commencement of the *Project* until the earliest of.

.1 120 days after the *Project In Use Date* or the registration of the condominium, whichever is later.

.2 on the commencement of use or occupancy unless such use or occupancy is for construction purposes, commercial purposes, habitational purposes, parking purposes, or for the installation and testing and commissioning of equipment forming part of the *Project*.

.3 when the *Place of the Project* is left unattended for more than 30 consecutive calendar days.

The *Owner* is not required to provide coverage for Asbestos, Cyber Risks, Mould or Terrorism."

SC13.10 Delete paragraph 11.1.4.2 in its entirety.

SC13.11 Add new paragraph 11.1.4.2 as follows:

"11.1.4.2 The *Owner* shall obtain, maintain and pay for Comprehensive Boiler and Machinery insurance including but not limited coverage for testing and commissioning in the joint names of the *Owner*, the *Construction Manager*, the *Consultant*, and all *Trade Contractors*. The policy shall have limits of not less the full replacement cost of the work including reoccurring soft costs subject however to limits of not less than 1.1 times the Construction Cost with a deductible not greater than \$25,000 except for Loss if any will be payable to the *Owner*, the *Owner's* Mortgagee and the *Construction Manager* as their interest may appear. Providing the *Owner* is not in default of any mortgage requirements the *Owner* and the *Owner's* Mortgagee will use the proceeds from any insurance to restore the work as nearly as possible to its condition before such loss or damage occurred. Such coverage will not include the replacement cost of any property not included in the capital cost of new construction. The Comprehensive Boiler and Machinery insurance shall be provided from the date of commencement of the *Project* until the earliest of.

.1 120 days after the *Project In Use Date* or the registration of the condominium, whichever is later.

.2 on the commencement of use or occupancy unless such use or occupancy is for construction purposes, commercial purposes, habitational purposes, parking purposes, or for the installation and testing and commissioning of equipment forming part of the *Project*.

.3 when the *Place of the Project* is left unattended for more than 30 consecutive calendar days. The *Owner* is not required to provide coverage for Asbestos, Cyber Risks, Mould or Terrorism.

SC13.12 At paragraph 11.1.4.3 delete, "The "Broad form" property and boiler and machinery policies shall provide that in the case of a loss or damage payment shall be made to the *Owner*, the *Trade Contractor*, the *Construction Manager* and the *Consultant* as their interest may appear."

SC13.13 Delete paragraph 11.1.5.2 in its entirety.

SC13.14 Delete paragraph 11.1.8 in its entirety.

SC13.15 Delete paragraph 11.1.9 in its entirety.

SC13.16 Delete paragraph 11.1.10 in its entirety.

SC13.17 Add new paragraph 11.1.11 as follows:

"11.1.11 Notwithstanding the requirement of the *Owner* to take out and maintain Wrap-up Liability Insurance the *Trade Contractor* shall take out and maintain Commercial General Liability Insurance (for all operations not insured under the Wrap-Up Liability Insurance Policy or for which the Trade Contractor desires additional insurance) with limits not less than \$5,000,000 covering the *Trade Contractor* and all operations of the *Trade Contractors* sub-contractors. The *Owner* and *Construction Manager* will be included as additional insured's, and such policies will be endorsed to provide a waiver of subrogation in favour of the *Owner* and *Construction Manager* or their employees."

SC13.18 Add new paragraph 11.1.12 as follows:

"11.1.12 General Insurance Provisions

- a. No Representation of Coverage Adequacy. By requiring the insurance as set out herein, the *Owner* and *Construction Manager* and their associated and affiliated companies, their officers, directors, members, managers, partners and employees, do not represent that the coverage and limits will necessarily be adequate to protect the *Trade Contractor*. The insurance required hereunder may be contained in one or more policies prior to commencement of any work or services.
- b. The *Trade Contractor* shall furnish to the *Owner* and *Construction Manager*, certificates of insurance or copies of policies showing that such insurance is in force within 10 days of award and as requested thereafter.
- c. In the event of any failure of the *Trade Contractor* to furnish and maintain insurance hereunder, the *Owner*, at its option and without waiving default of the *Trade Contractor*, shall have the right, but not the obligation, to obtain such insurance for and in the name of the *Trade Contractor*. In such event, the *Owner*, may, at its absolute discretion and option, either require that the *Trade Contractor* pay the cost thereof upon demand or deduct from any sums owing to the *Trade Contractor* all costs for obtaining such appropriate insurance. In either event, the *Trade Contractor* shall furnish to the *Owner*, all information required by the insurance carrier.
- d. The insurance requirements of this contract shall be placed with insurers licensed to operate in the Province of Ontario, with A.M. Best ratings of at least "A".

**SC14 GC 12.1 Indemnification**

SC14.1 Delete paragraph 12.1.2.2 in its entirety.

SC14.2 Add new paragraph 12.1.2.2 as follows:

"12.1.2.2 In respect to losses suffered by the *Owner* and the *Trade Contractor* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 – CONTRACT PRICE or \$5,000,000, but in no event shall the sum be greater than \$20,000,000."

SC14.3 Delete paragraph 12.3.1 in its entirety.

SC14.4 Add new paragraph 12.3.1 as follows:

"12.3.1 Except for extended warranties as described in paragraph 12.3.7, the warranty period under the *Contract* is two years or such longer period as specified in the contract documents or as required by the Tarion Corporation and the Ontario New Home Warranties Plan Act R.S.O. 1990 c.o.31 ("ONHWPA") from the date upon which the condominium corporation is registered, all in accordance with the requirements of the Tarion Corporation and ONHWPA Act."

SC14.5 At paragraph 12.3.4 delete, "one year warranty period" and replace with, "two year warranty period".

SC14.6 At paragraph 12.3.5 delete, "one year warranty period" and replace with, "two year warranty period".

SC14.7 At paragraph 12.3.7 delete, "one year warranty period" and replace with, "two year warranty period".

SC14.8 Add new paragraph 12.3.8, "Upon written notice from the *Owner* or *Construction Manager* to the *Trade Contractor* of any defect or deficiency the *Trade Contractor* will either make the necessary repairs, or in the event of failure to do so within five (5) working days after receiving written notification from the *Owner*, the *Owner* may make such repairs at the *Trade Contractor's* expense, which the *Trade Contractor* agrees to pay upon demand."

END OF SUPPLEMENTARY CONDITIONS



This is Exhibit "2" referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



A commissioner for taking Affidavits

MOD DEVELOPMENT

Court File No. CV-18-608978-00CL

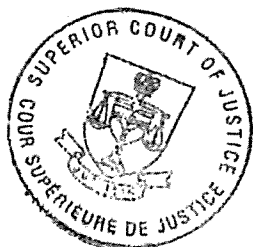
ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) MONDAY, THE 19<sup>TH</sup>  
JUSTICE HAINEY ) DAY OF NOVEMBER, 2018

BETWEEN

BRIDGING FINANCE INC., as agent for  
2665405 ONTARIO INC.

Applicant



- and -

1033803 ONTARIO INC. and 1087507 ONTARIO LIMITED

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED;  
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43,  
AS AMENDED

ORDER  
(Appointing Receiver)

THIS APPLICATION made by Bridging Finance Inc. (the "Applicant"), as agent for 2665405 Ontario Inc., for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing KSV Kofman Inc. ("KSV") as receiver and manager (in such capacities, the "Receiver") without security, of (i) all of the assets, undertakings and properties of 1033803 Ontario Inc. operating as Forma-Con Construction and Forma Finishing ("Forma-Con") and 1087507 Ontario Limited (together with Forma-Con, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, (ii) the specific assets of Bondfield

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Construction Company Limited and Bondfield Construction Equipment Ltd. listed on Schedule A hereto (the “**Forma-Con Related Assets**”), and (iii) the real property known municipally as 131 Saramia Crescent in Vaughan, Ontario (“**131 Saramia Crescent**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Brian Champ sworn November 15, 2018, and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, the Debtors and their affiliates, Zurich Insurance Company Ltd. and Canada Revenue Agency, no one else appearing although duly served as appears from the affidavit of service of Loren Cohen sworn November 15, 2018, and on reading the consent of KSV to act as the Receiver,

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

#### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of: (i) all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof; (ii) the Forma-Con Related Assets; and (iii) 131 Saramia Crescent, the details of which are specified on Schedule B hereto (collectively, the “**Property**”).

#### **RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of any Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform or disclaim any contracts of a Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors or in respect of the Property and to exercise all remedies of a Debtor or the owner of the Property in collecting such monies, including, without limitation, to enforce any security held by a Debtor or in respect of Property;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of a Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors (or any one of them), the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or



applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to file an assignment in bankruptcy on behalf of any Debtor, or to consent to the making of a bankruptcy order against a Debtor;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$2,000,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “Persons” and each being a “Person”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records,

and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured

creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Debtors, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors or in respect of the Property or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors or in respect of the Property are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

14. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on a Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such

amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

#### **PIPEDA**

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be

deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “Receiver’s Borrowings Charge”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule C hereto (the “Receiver’s Certificates”) for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

#### SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List



website) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.ksvadvisory.com/insolvency-cases/Forma-Con>.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **CRITICAL PAYMENTS**

27. **THIS COURT ORDERS** that the Receiver may, with the written consent of the Applicant, make payments owing by the Debtors to subcontractors and other creditors on account of amounts owing prior to the date of this Order.

#### **GENERAL**

28. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any Debtor.

30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make

such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estates with such priority and at such time as this Court may determine.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver, the Applicant and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

34. **THIS COURT ORDERS** that the style of cause for this Application be and is hereby amended as set forth in this Order.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

NOV 19 2018

PER / PAR:

  
HAIMEY J.

**SCHEDULE A**  
**FORMA-CON RELATED ASSETS**  
**[ATTACHED]**

Forma - Con Construction, Crane location log Sep. 10, 2018

MAKE	MODEL	YEAR	SERIAL #	CURRENT LOCATION
Comedil	CTL180-A Luffar	2006	SN-G8705022	WATERWORKS
Comedil	CTL180-A Luffar	2006	SN-G8705030	MASSEY TOWER
Comedil	CTL180-A Luffar	2005	SN-G8705041	CITY LIGHTS
Comedil	CTL180-A Luffar	2007	SN-G8707026	CITY LIGHTS
Comedil	CTL180-A Luffar	2007	SN-G8707050	AXIS CONDO
Comedil	CTL250-A Luffar	2005	SN-G4005004	YC CONDO
Comedil	CTL250-A Luffar	2006	SN-G1006005	21 AVENUE ROAD
Comedil	CTT 831-18-m	2005	SN-G5905001	DTEM C&D
Comedil	CTT 831-18-m	2005	SN-G5905025	WATERLOO SLC-PAC
Comedil	CTT 831-18-m	2005	SN-G5905049	YARD
Comedil	CTT 831-18-m	2005	SN-G5905034	Mills-Square
Pecco	PC-1500		SN-0710	EAST UNIFIED
Pecco	PC 1600/2000	1976	SN-0603	VANGUARD
Pecco	PC-2000		SN-0907	YARD
Pecco	PC 2000		SN-1403	YARD
Pecco	PC-3000		SN-0407	BLUEDIAMOND
Pecco	PC-3600	1980	SN-304	Yard
Peiner	SK-200	1981	SN-0803	YARD
Peiner	SK-140		SN-0515	YARD
Peiner	SK-315	2004	SN-25125	YARD
Peiner	SK-315	2004	SN-25127	RENTED
Peiner	SK-315	1999	SN-105	YARD
Peiner	SK-315	2005	SN-25143	St Josephs Morrow
Peiner	SK-315	2000	SN-069	YARD
Peiner	SK-415	2004	SN-26073	YARD
Peiner	SN 166 Luffing	1999	SN-006	571 Prince Edward
Potain	MR405-Luffing	1999	SN-87069	WATERWORKS
Mantowoc	8000 - CRAWLER	2007	SN-8501037	VISTA CONDO
Mantowoc	8000 - CRAWLER	2011	SN-8501202	ST JOSEPH MORROW
Grove	RT540E MOBILE	2011	SN-221527	ST JOSEPH MORROW
Grove	RT540E MOBILE	2011	SN-227164	Massey Hall
Grove	RT745 TON		SN-70173	Yard
ashan	QBY804	2007	SN-1120	Yard

32 Cranes  
32

Sold



Inventory of property of the Corporation

Item No.	Description of Property	Quantity	Unit of Measure	Acquisition Date	Original Cost	Current Value	Location
1	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
2	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
3	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
4	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
5	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
6	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
7	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
8	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
9	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
10	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
11	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
12	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
13	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
14	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
15	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
16	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
17	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
18	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
19	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp
20	General Corporation of Ltd.	1000	Shares	1980	1000.00	1000.00	General Corp

General Corporation of Ltd.

Inventory of property

1980



BONDFIELD CONSTRUCTION COMPANY LIMITED  
407 BASALTIC ROAD  
CONCORD, ONTARIO, CANADA

Department Evaluation Summary

Effective Date: July 23, 2018

Departments:
Cranes - Basaltic Yard
Cranes - Off Site
Concrete Forming & Shoring Equipment





407 BASALTIC ROAD  
CONCORD, ONTARIO, CANADA

Description	
Item #1 Qty: (1)	Comedil Model CTL180-A 16-Ton Luffing Tower Crane, S/N G8709022, (2006); 55 Meter Radius, 92.5 Meter Under Hook; with (9) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams
Item #2 Qty: (1)	Comedil Model CTT 331-16-M 16-Ton Tower Crane, S/N G6906031, (2005); 75 Meter Radius, 92.5 Meter Under Hook; with (12) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams
Item #3 Qty: (1)	Comedil Model CTT 331-16-M 16-Ton Tower Crane, S/N G6906049, (2005); 75 Meter Radius, 92.5 Meter Under Hook; with (12) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams
Item #4 Qty: (1)	Pecco Model PC-2000 22,000-Lb. Tower Crane, S/N 1103; 60 Meter Radius, 48 Meter Under Hook; with (7) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams
Item #5 Qty: (1)	Pelner Model SK-200 6.25-Ton Tower Crane, S/N 0803, (1981); 55 Meter Radius, 48 Meter Under Hook; with (11) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams
Item #6 Qty: (1)	Pelner Model SK-140 6.25-Ton Tower Crane, S/N 0516; 55 Meter Radius, 48 Meter Under Hook; with (8) Tower Sections; (3) Outer Sections; and Apex Jib Section
Item #7 Qty: (1)	Pelner Model SK-315 16-Ton Tower Crane, S/N 25125, (2004); 70 Meter Radius, 72 Meter Under Hook; with (11) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams
Item #8 Qty: (1)	Pelner Model SK-315 16-Ton Tower Crane, S/N 105, (1999); 70 Meter Radius, 72 Meter Under Hook; with (11) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams

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COMPANY NAME: Bondfield Construction Company Limited  
EFFECTIVE DATE: July 28, 2018  
REPORT DATE: August 10, 2018  
JOB NUMBER: 8038290

 Gordon  
Brothers

BONDFIELD CONSTRUCTION COMPANY LIMITED  
 JOB NUMBER 3088256  
 MACHINERY & EQUIPMENT LISTING  
 100 DUNDAS STREET EAST, TORONTO, ONTARIO, CANADA

Description			
Item #9	Qty: (1) Palfinger Model SK-315 18-Ton Tower Crane, S/N 060, (2000); 70 Meter Radius, 72 Meter Under Hook; with (11) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams		
Item #10	Qty: (1) Palfinger Model SK-415 20-Ton Tower Crane, S/N 28078, (2004); 75 Meter Radius, 65 Meter Under Hook; with (11) Tower Sections, (5) Top Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams		
Item #11	Qty: (1) Grove Model RT746-45-Ton Wheel Rough Terrain Crane, S/N 70173, (1988); with Outriggers; (New Engine 2015)		
Item #12	Qty: (1) Lot of Miscellaneous and Large Quantity of Tower Crane Parts and Components, To Include But Not Limited To: Beams; Adaptors; Brackets; Panels; Corner Units; Braces; Frames; Jacks; Extensions; Screws; Bases; Decks; Racks; Clips; Tube; Planks; Stairways; Hooks; Baskets; etc.		
LUFFING TOWER CRANES, EXHAUSTORS			
Change of Site			
Item #13	Qty: (1) Comedil Model CTL180-A 18-Ton Luffing Tower Crane, S/N G8708030, (2006); 55 Meter Radius, 92.5 Meter Under Hook; with (9) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams; (Not Inspected) (Asset Documentation in Photograph Section)		
Item #14	Qty: (1) Comedil Model CTL180-A 18-Ton Luffing Tower Crane, S/N G8705011, (2005); 55 Meter Radius, 92.5 Meter Under Hook; with (9) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams; (Not Inspected)		
Item #15	Qty: (1) Comedil Model CTL180-A 18-Ton Luffing Tower Crane, S/N G8707026, (2007); 55 Meter Radius, 92.5 Meter Under Hook; with (9) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams; (Not Inspected)		

BONDFIELD CONSTRUCTION COMPANY LIMITED  
 JOB NUMBER: 2008229  
 INVENTORY EQUIPMENT LISTING  
 CONCORD ONTARIO CANADA

Description			
Item #16	Qty: (1) Comedil Model CTL180-A 18-Ton Luffing Tower Crane, S/N G8707050, (2007); 65 Meter Radius, 92.5 Meter Under Hook; with (9) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams; (Not Inspected)		
Item #17	Qty: (1) Comedil Model CTL250-A 18-Ton Luffing Tower Crane, S/N G1006004, (2005); 55 Meter Radius, 92.5 Meter Under Hook; with (10) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams; (Not Inspected)		
Item #18	Qty: (1) Comedil Model CTL250-A 18-Ton Luffing Tower Crane, S/N G1006005, (2006); 55 Meter Radius, 92.5 Meter Under Hook; with (10) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams; (Not Inspected)		
Item #19	Qty: (1) Comedil Model CTT 331-18-M 18-Ton Tower Crane, S/N G5906001, (2006); 75 Meter Radius, 92.5 Meter Under Hook; with (12) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams; (Not Inspected)		
Item #20	Qty: (1) Comedil Model CTT 331-18-M 18-Ton Tower Crane, S/N G5905025, (2006); 75 Meter Radius, 92.5 Meter Under Hook; with (12) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams; (Not Inspected)		
Item #21	Qty: (1) Pecco Model PC-1800 22,000-Lb. Tower Crane, S/N 0710; 60 Meter Radius, 48 Meter Under Hook; with (7) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams; (Not Inspected)		
Item #22	Qty: (1) Pecco Model PC-1800/2000 (Hybrid) 22,000-Lb. Tower Crane, S/N 0803, (1976); 60 Meter Radius, 48 Meter Under Hook; with (7) Tower Sections; Apex & (4) Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams		
Item #23	Qty: (1) Pecco Model PC-2000 22,000-Lb. Tower Crane, S/N 0907; 60 Meter Radius, 48 Meter Under Hook; with (7) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams		
Item #24	Qty: (1) Pecco Model PC-3000 28,000-Lb. Tower Crane, S/N 304, (1980); 60 Meter Radius, 35 Meter Under Hook; with (7) Tower Sections; Apex & Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams; (Not Inspected)		

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COMPANY NAME: Bondfield Construction Company Limited  
 EFFECTIVE DATE: July 28, 2019  
 REPORT DATE: August 19, 2019  
 JOB NUMBER: 2008229

 Gordon  
 Brothers

BONDFIELD CONSTRUCTION COMPANY LIMITED  
JOB NUMBER: 3062288

IV. MACHINERY & EQUIPMENT LISTING  
CONCORD, ONTARIO CANADA

Description		
<p><i>Item #25</i> Qty: (1) Peeco Model PC-3000 22,000-Lb. Tower Crane, S/N 0107109; 55 Meter Radius, 42 Meter Under Hook; with (6) Tower Sections; Apex &amp; Jib Sections; Heated/AO Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams; (Not Inspected)</p>		
<p><i>Item #26</i> Qty: (1) Pelner Model SK-315 16-Ton Tower Crane, S/N 25127, (2004); 70 Meter Radius, 72 Meter Under Hook; with (11) Tower Sections; Apex &amp; Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams; (Not Inspected)</p>		
<p><i>Item #27</i> Qty: (1) Pelner Model SK-315 16-Ton Tower Crane, S/N 25148, (2005); 70 Meter Radius, 72 Meter Under Hook; with (11) Tower Sections; Apex &amp; Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams; (Not Inspected)</p>		
<p><i>Item #28</i> Qty: (1) Pelner Model SN186 12-Ton Luffing Tower Crane, S/N 006, (1999); 50 Meter Radius, 98 Meter Under Hook; with (4) Single, (1) Double Tower Sections; Apex &amp; Jib Sections; Heated/AC Enclosed Operator's Cab; Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams; (Not Inspected)</p>		
<p><i>Item #29</i> Qty: (1) Potain Model MR406 24-Ton Luffing Tower Crane, S/N 87089-M, (1999); 60 Meter Radius, 125 Meter Under Hook; with (11) Tower Sections; Hoist &amp; Jib Sections; Heated/AC Enclosed Operator's Cab; (Broken Window); Turntable; Hoist Winches; Hook Block; Trolley; Counterweights; and Climbing Beams; (Not Inspected)</p>		
<p><i>Item #30</i> Qty: (1) Manitowoc Model 8000 80-Ton Crawler Crane, S/N 8501037, (2007); (Not Inspected)</p>		
<p><i>Item #31</i> Qty: (1) Manitowoc Model 8000 80-Ton Crawler Crane, S/N 8501202, (2011); with Proface Touch Screen Monitor; Counter Weights; Model J80024RTC Hook, S/N 11-7238, 80-Ton Load, 7/8" Rope, 54.41 MT; and 160' Main Lattice Boom; (Not Inspected) (Asset Documentation in Photograph Section)</p>		
<p><i>Item #32</i> Qty: (1) Grove Model RT640E 40-Ton Rough Terrain Crane, S/N 231527, (2011); with 4-Section 102' Main Telescopic Boom; and 45' Swing Away Jib, with Slinger; (Not Inspected) (Asset Documentation in Photograph Section)</p>		
<p><i>Item #33</i> Qty: (1) Grove Model RT640E 40-Ton Rough Terrain Crane, S/N 227154, (2011); 12,559 Hours Indicated; with 4-Section 102' Main Telescopic Boom; and 45' Swing Away Jib, with Slinger</p>		

15 COMPANY NAME: Bondfield Construction Company Limited  
EFFECTIVE DATE: July 23, 2018  
REPORT DATE: August 10, 2018  
JOB NUMBER: 3062288

 Gordon  
Brothers  
1962

BONFIELD CONSTRUCTION COMPANY LIMITED MACHINERY & EQUIPMENT LISTING  
 JOB NUMBER 808228 CONCORD, ONTARIO, CANADA

Description		
Item #34 Qty(1) Fushun Yongmao Model QUY80A 80-Ton Crawler Crane, S/N 1128, (2007); with LSI Load System Monitor		
Item #35 Qty(1) Grove Model RT65S 35-Ton Rough Terrain Crane, S/N 33378, (1975); 1,683.9 Hours Indicated; with 4-Section Telescopic Boom; (Not Inspected) (Asset Documentation In Photograph Section)		
Item #36 Qty(1) Lot of Concrete Forming & Shoring Rental Equipment; (Note: Based On Information Supplied By The Company; Complete Detailed List Located In Appendix)		

16 COMPANY NAME: Bonfield Construction Company Limited  
 EFFECTIVE DATE: July 23, 2018  
 REPORT DATE: August 10, 2018  
 JOB NUMBER: 808228



QTY	Year Make & Model or Equipment Description
20	2014 Ford F150 XLT Pickup truck
1	2013 Kenworth T800B Boom Truck with 30 Tonne Manltex Crane
1	2015 Kenworth T880B Roll-Off Truck
4	Roll-Off Deck for 2015 Kenwoth T880B Roll-Off Truck
1	2006 Kenworth T800 Roll-Off truck
4	Roll-Off Deck for 2006 Kenworth Roll-Off
1	2012 Milano 32 Ft Trailer (Accompanies 2013 Kenworth Boom Truck)
1	2015 JC 34 Ft Traller (Accompanies 2015 Kenworth T880 Roll-Off
2	2015 Doosan C185 Diesel Compressor
3	2012 Cat 100 KW Diesel Generator
1	2010 Cat TH360B 10,000 lb Capacity Telehandler
1	2016 Putzmelster Thom-Katt TK60HP Shotcrete Pump-Trailer Mounted
15	Knaack Job Box 4830 complete with tools : skillsaws, rotary hammers, extension cords, Impact guns , hand tools *(ALL USED)
5	20 Ft Storage Container
4	Mobile Office Trailer 8' x 16'

1	Schwing SP500 Concrete Pump Trailer Mounted
40	Used Concrete Buckets
4	Used Office furniture, filing cabinets, digitizer, computers
	Peri Mp480 Aluminum Multiprops for forming
	Peri MP350 Aluminum Multiprops for forming
	Peri Panels and Accessories for forming Value including Multiprops

① OK  
Schedule C

BONDFIELD CUSTOMER OWNED  
Material List at Current List Price  
Sep 6 2018

MatNumber	MatDescription	Quantity
SR10493	ALUMA ALUPROP TOP PLATE ADAPTER	260
SR11	BEAM ALUMA 16FT (4.9M)	2781
SR118	SOCKET POST ALUMINUM	200
SR12	BEAM ALUMA 160 (4.88M)	3279
SR122	STRONGBACK CHANNEL 55K 2.59M 8FT6	120
SR123	STRONGBACK CHANNEL 55K 3.91M 12FT6	430
SR124	STRONGBACK CHANNEL 55K 4.88M 16FT	18
SR127	CHANNEL SPLICE STEEL	300
SR128	BAR STRONGBACK SPLICE	300
SR130	PLATE TIE (BK)	1600
SR131	BRACKET BOLTED CARWALK	200
SR136	SOLE STRONGBACK	208
SR14	BEAM ALUMA 14FT (4.37M)	4516
SR144	LUG WALL LIFTING ASSEMBLY	200
SR15	BEAM ALUMA 10FT 6IN (3.2M)	2035
SR16	BEAM ALUMA 12FT (3.66M)	3185
SR163	CHANNEL STRONGBACK 55K 9.83FT (3M)	400
SR17	BEAM ALUMA 21FT (6.40M)	3105
SR1861094	ORMA WALKWAY BRACKET	31
SR1870629	BEAM CC 2.82	1400
SR1870931	BEAM CC 1.57	660
SR1870940	TRANSVERSAL CC TE 0.75	200
SR1870945	TRANSVERSAL CC TR 1.5	742
SR1870950	TRANSVERSAL CC TR 0.75	220
SR1870980	HEAD CC RD	84
SR1870990	PANEL CC 1.5x0.75	3150
SR1870998	PANEL CC 0.75x0.75	185
SR1870995	BEAM CC W 1.5	272
SR1870950	BEAM CC W 0.75	130
SR1870985	PANEL CC 1.5x0.375	134
SR1870940	TRANSVERSAL CC TE 1.5 ALU	1521
SR1870945	TRANSVERSAL CC TE .75 ALUM	78
SR1870440	DROP HEAD SH	1446
SR1870462	EDGE BEAM 2.32	100
SR1870465	EDGE BEAM 1.57	50
SR1870580	UNIVERSAL HEAD CC (NEW STYLE)	120
SR1870516	SH PLY HEAD	937
SR1900002	PANEL 2.7x2.45 (6.8m <sup>2</sup> )	10
SR1900005	PANEL 2.7x1.2 (3.24m <sup>2</sup> )	10
SR1900008	PANEL 2.7x0.9 (2.43m <sup>2</sup> )	10
SR1900011	PANEL 2.7x0.6 (1.62m <sup>2</sup> )	5
SR1900020	PANEL 2.7x0.45 (1.21m <sup>2</sup> )	5
SR1900029	PANEL 2.7x0.3 (0.81m <sup>2</sup> )	5
SR1900032	PANEL 1.2x1.2 (1.44m <sup>2</sup> )	16
SR1900035	PANEL 1.2x0.9 (1.08m <sup>2</sup> )	16
SR1900038	PANEL 1.2x0.6 (0.72m <sup>2</sup> )	16
SR1900047	PANEL 1.2x0.45 (0.54m <sup>2</sup> )	8
SR1900056	PANEL 1.2x0.3 (0.36m <sup>2</sup> )	10
SR1900089	ORMA INSIDE CORNER 2.7	8
SR1900119	HEAD 60	60



② OK

SR1900123	PUSH-PULL PROP 2.4-3.5	60
SR1900134	PUSH-PULL PROP 1.1-1.7	60
SR1900144	PUSH PULL PROP SHOE	60
SR1900178	ORMA CLAMP	600
SR1900179	ORMA LIFTING HOOK	18
SR1900193	ORMA WALTER 8	90
SR1900247	COMPENSATION TUBE 1.2 (0.08 m2)	18
SR1900445	ORMA WALTER 1.55	50
SR1900448	WALTER HOOK	260
SR1900932	ORMA OUTSIDE CORNER 2.7	8
SR1900968	PUSH-PULL PROP 3.3-4.8	30
SR19008247	PANEL 3.3x2.4 (7.92m2)	40
SR19008251	PANEL 3.3x1.2 (3.96m2)	20
SR19008255	PANEL 3.3x1.0 (2.97m2)	40
SR19008256	PANEL 3.3x0.75 (2.475m2)	25
SR19008258	PANEL 3.3x0.6 (1.98m2)	30
SR19008262	PANEL 3.3x0.45 (1.485m2)	20
SR19008265	PANEL 3.3x0.3 (0.99m2)	20
SR19008271	ORMA INSIDE CORNER 3.3 (1.98m2)	8
SR19008273	ORMA OUTSIDE CORNER 3.3	16
SR19008461	COMPENSATION TUBE 3.3	16
SR19008750	ORMA LIFTING BRACKET/CHAIN	2
SR19008770	ORMA RETRACTABLE CORNER 3.3	40
SR19008771	ORMA RETRACTABLE CORNER 2.7	8
SR19008772	ORMA RETRACTABLE CORNER 1.2	32
SR2049	BASKET WIRE W-GATE	1
SR2050	BACK LARGE 3X6	3
SR2054	BACK SMALL 3X3	11
SR215	FRAME ALUMA 6X6 18KIP NOM/LEG ASM	920
SR216	FRAME ALUMA 6X5 18KIP NOM/LEG ASM	1018
SR2185	BRACE 35-40 X 70 SR	1600
SR2200	BRACE 5W X 4H	3000
SR2203	BRACE 4W X 4H	2150
SR2205	BRACE 4W X 2H	876
SR2211063	DOUBLE WR HEAD (TWO WAY)	288
SR2242	BRACE COMBINATION 2X4-7X2	1000
SR2243	BRACE 6W X 2H	475
SR2220010	ALUPROP 1.85-2.6	2120
SR2220020	ALUPROP 2.2-2.7	2113
SR2220030	ALUPROP 2.3-1.8	1800
SR2220090	UNIVERSAL TRIPOD CG4	33
SR2220120	BRACE FRAME 2.33m	652
SR2220125	BRACE FRAME 1.9m	638
SR2220180	BRACE FRAME 1.57m	228
SR2220740	BRACE FRAME 0.75m	208
SR228	LI HEAD 5' X 8'	1200
SR245	FRAME ALUMA ASSEMBLED 6X3	155
SR257	FRAME ALUMACS 4X 10KIP NOM/LEG	2224
SR258	FRAME ALUMACS 4X3 10KIP NOM/LEG	2956
SR259	FRAME ALUMACS 4X3 30KIP NOM/LEG	1652
JR261	CONNECTOR INTERFRAME ALUMACS	6000
SR265	PLATE BASE	1098
SR267	TRUSS JACK 12X18 MOD. 100L	600
SR262	TRUSS EXTENSION LEG INNER 8FT	600
SR269	TRUSS CROSS BRACE 7H (2.15M)	180

New

SR370	TRUSS CROSS BRACE 10R (3.04M)	250	\$ 105.00	\$ 26,250.00
SR3991	RIVET	3388	\$ 2.00	\$ 6,776.00
SR4045	PIN HITCH	3388	\$ 0.25	\$ 847.00
SR4354	TRUSS JACK RETAINER	600	\$ 6.00	\$ 3,600.00
SR513	SCREWJACK UNIV, ALUMA FRAME	3000	\$ 80.00	\$ 180,000.00
SR5160	J HEAD FOR 1M JACK	60	\$ 25.00	\$ 1,500.00
SR621	SCREWJACK UNIV, ALUMACS FRAME	21364	\$ 70.00	\$ 1,495,480.00
SR60	ALUM DROPHEAD BEAM 10'8"(3.20M)	11	\$ 262.00	\$ 2,882.00
SR6161	HEAVY DUTY GALV. SHORE 6'6" TO 11'	6885	\$ 155.00	\$ 1,067,175.00
SR62	BEAM ALUMA 10FT (3.04M)	1200	\$ 160.00	\$ 192,000.00
SR6408	POST SHORE EXTENSION 2'	1064	\$ 50.00	\$ 53,200.00
SR7436	SCREWJACK 1M W/HANDLE MKII ASS'Y	188	\$ 80.00	\$ 15,040.00
SR7551	PLATE BASE FOR 1M SCREW	128	\$ 16.00	\$ 2,048.00
SR85	BEAM ALUMA 8FT (2.75M)	1812	\$ 144.00	\$ 260,928.00
SR9310	TRUSS W OUTER 30R (9.14M) #8E	200	\$ 3,098.00	\$ 619,600.00
SR9317	ALUMA DEK RACK	1	\$ 472.00	\$ 472.00
SR9361	4'X5' ALUMACS FRAME	1000	\$ 319.00	\$ 319,000.00
SR9466	1M BASEPLATE SCREWJACK MARK II ASS'Y	2782	\$ 118.00	\$ 328,276.00
SR9467	1M JHEAD SCREWJACK MARK II ASS'Y	2850	\$ 119.00	\$ 339,150.00
SRALT16	16' ALUMINUM TUBE	8	\$ 78.30	\$ 626.40
SRALT4	4' ALUMINUM TUBE	185	\$ 19.60	\$ 3,626.00
SRB104	CROSS BRACE 10X4	1800	\$ 42.80	\$ 77,040.00
SRBCSSV	BEAM CLIP SCAF SPEC V C/W BT	11	\$ 6.50	\$ 71.50
SRBP1	BASE PLATE (FIXED)	18	\$ 18.20	\$ 291.60
SRC8R	8" RUBBER WHEEL CASTER	4	\$ 215.00	\$ 860.00
SRK870001	ADJUSTABLE CC HEAD (3 WAY)	10	\$ 161.00	\$ 1,610.00
SRK870002	PANEL PALLET CC4 LARGE (5'X8'X7.25')	30	\$ 1,040.00	\$ 31,200.00
SRLVAC-S	LAYER ADAPTER SWIVEL	181	\$ 53.80	\$ 9,737.80
SRACGW	RIGHT ANGLE WEDGE CLAMP 2" X 2"	11	\$ 21.50	\$ 238.50
SRSJB	SCREWJACK W/BASEPLATE 24"	34	\$ 42.70	\$ 1,451.80
SRLB10	SURELOCK BRACE 10FT (3.05M)	22	\$ 96.75	\$ 2,128.50
SRLB7	SURELOCK BRACE 7' (2.13M)	175	\$ 81.38	\$ 14,241.50
SRLBC	SURELOCK BASE COLLAR	45	\$ 24.83	\$ 1,117.35
SRLDH10	SURELOCK DBL LEDGER 10FT 3.05M	2	\$ 154.05	\$ 308.10
SRLH10	SURELOCK LEDGER 10FT (3.05M)	17	\$ 77.83	\$ 1,323.11
SRLH22	SURELOCK LEDGER 2FT 2 (0.65M)	3	\$ 37.41	\$ 112.23
SRLH310	SURELOCK LEDGER 3FT 10 (1.15M)	280	\$ 44.72	\$ 12,521.60
SRLH36	SURELOCK LEDGER STRWY 3FT61.07M	72	\$ 63.32	\$ 4,559.04
SRLH52	SURELOCK LEDGER 5FT 2IN(1.67M)	10	\$ 51.60	\$ 516.00
SRLH70	SURELOCK LEDGER 7FT (2.13M)	480	\$ 60.63	\$ 29,102.40
SRLSB2B	SURELOCK SIDE BRKT 21IN(0.65M)	2	\$ 77.08	\$ 154.16
SRLSB3B	SURELOCK SIDE BRKT 3 BRD .81M	1	\$ 150.50	\$ 150.50
SRLSP70	PLANK STEEL(SPII)7' 2.13M W/HR	89	\$ 109.11	\$ 9,710.79
SRLSS70	STAIRWAY STRINGER 7FT (2.13M)M	89	\$ 477.84	\$ 32,970.96
SRLST	TREAD STAIR SCAFD. 8 X 3 MK3	253	\$ 69.88	\$ 17,679.64
SRLVP33	SURELOCK STANDARD 3FT 3IN(1M)	26	\$ 42.25	\$ 1,098.50
SRLVP411	SURELOCK STANDARD 4FT 11 1.5M	30	\$ 57.73	\$ 1,731.90
SRLVP67	SURELOCK STANDARD 6FT 7IN(2M)	58	\$ 71.08	\$ 4,121.48
SRLVP810	SURELOCK STANDARD 8FT 10IN(3M)	201	\$ 106.32	\$ 21,370.32
SRSSP10	10' STL/PLANK GALVW/HOOKS	12	\$ 138.40	\$ 1,660.80
SRSSP5	5' STL/PLANK GALV.W/HOOKS	5	\$ 86.30	\$ 431.50
SRSSP7	7' STL/PLANK GALV.W/HOOKS	80	\$ 108.00	\$ 8,640.00
SRSSRS	SYSTEM RACK SMALL	5	\$ 411.80	\$ 2,059.00
SRSSX562	GOOSER 10'	6	\$ -	\$ -
SRU043008	METAL BASKET 4'X3'X2'	20	\$ 307.00	\$ 6,140.00

As of 31/10/2018

### Summary ReBent Report

Particulars Voucher 106913

Material #	Description	Quantity
Vendor Number: 00812 - SHONDUNGH COONS CO LTD		
PO Number: 165214014		
SR1081	ALUMA ALUMPHOTOGRAPHY APAPER	280
SR11	BEAM ALUMA BEE 15MM	278
SR1487	GUARDRAIL FOOT PLAIN W/STLOCK	3
SR119	SOCIETY POST ALUMINUM	200
SR12	BEAM ALUMA 15MM	279
SR122	STRONGBACK CHANNEL BESS 15MM	121
SR123	STRONGBACK CHANNEL BESS 15MM 1250	130
SR124	STRONGBACK CHANNEL BESS 15MM 10FT	18
SR124	STRONGBACK BESS CHANNEL	0
SR127	CHANNEL BRIDGE BEE	800
SR128	BAS STRONGBACK BRIDGE	400
SR130	FLYER 1000	1600
SR131	BRACKET BULTEROCK WALK	200
SR136	SHOE STRONGBACK	200
SR14	BEAM ALUMA NET 152MM	601
SR144	TRG WAD LIFTING ASSEMBLY	200
SR15	BEAM ALUMA 100MM (L20)	2035
SR16	BEAM ALUMA 100MM	6195
SR163	CHANNEL STRONGBACK BESS 15MM	400
SR17	BEAM ALUMA 150MM	8105
SR181004	ORINA WALKWAY BRACKET	31
SR182020	BEAM CC 250	1400
SR187001	BEAM CC 57	850
SR187002	TRANSVERSAL CC 115	0
SR187004	TRANSVERSAL CC 175	200
SR187005	TRANSVERSAL CC 175	712
SR187005	TRANSVERSAL CC 175	220
SR187007	DRYHEAD CC	0
SR187008	HEAD CC 10	89
SR187009	PANEL CC 150075	3850
SR187009	PANEL CC 150075	188
SR187009	BEAM CC 150	272
SR187010	HEAD CC 10075	138
SR187010	DRYHEAD CC	0
SR187015	PANEL CC 150075	134
SR187015	TRANSVERSAL CC 150 ALL	324
SR187015	TRANSVERSAL CC 150 ALUM	78
SR187015	DRYHEAD 150	1448

As of 01/10/10

Summary Report

Parameter: Vendor: 10682

Material #	Description	Quantity
SH100404	EDGE BRAM 252	100
SH100405	EDGE BRAM 157	50
SH100571	UNIVERSAL HEAD COINER STYLE	120
SH100576	BRUSH HEAD	137
SH100602	PANEL 2700 (1.65m <sup>2</sup> )	10
SH100606	PANEL 2700 (1.65m <sup>2</sup> )	10
SH100608	PANEL 2700 (1.65m <sup>2</sup> )	10
SH100611	PANEL 2700 (1.65m <sup>2</sup> )	5
SH100620	PANEL 2700 (1.65m <sup>2</sup> )	6
SH100623	PANEL 2700 (1.65m <sup>2</sup> )	5
SH100632	PANEL 2700 (1.65m <sup>2</sup> )	15
SH100635	PANEL 2700 (1.65m <sup>2</sup> )	10
SH100638	PANEL 2700 (1.65m <sup>2</sup> )	15
SH100647	PANEL 2700 (1.65m <sup>2</sup> )	8
SH100650	PANEL 2700 (1.65m <sup>2</sup> )	10
SH100669	ORNA INSIDE CORNER 27	8
SH100678	HEAD 60	60
SH100683	PUSH PULL PROP 27 32	60
SH100684	PUSH PULL PROP 10 32	60
SH100684	PUSH PULL PROP 30E	150
SH100670	ORNA CAMP	600
SH100679	ORNA BEINFIDOK	15
SH100693	ORNA WALE 60	60
SH100697	COMPENSATION TUBE 12 (0.06m <sup>2</sup> )	15
SH100442	ORNA WALE 75	50
SH100439	WALE HOOK	250
SH100432	ORNA OUTSIDE CORNER 27	8
SH100439	PUSH PULL PROP 32 18	30
SH100827	PANEL 2700 (1.65m <sup>2</sup> )	40
SH100829	PANEL 2700 (1.65m <sup>2</sup> )	20
SH100823	PANEL 2700 (1.65m <sup>2</sup> )	40
SH100826	PANEL 2700 (1.65m <sup>2</sup> )	25
SH100829	PANEL 2700 (1.65m <sup>2</sup> )	20
SH100822	PANEL 2700 (1.65m <sup>2</sup> )	20
SH100825	PANEL 2700 (1.65m <sup>2</sup> )	20
SH100827	ORNA INSIDE CORNER 27 32	10
SH100828	ORNA OUTSIDE CORNER 23	0
SH100827	ORNA RETRACTABLE CORNER 32	0
SH100828	ORNA RETRACTABLE CORNER 27	0
SH100827	COMPENSATION TUBE 30	15
SH100829	ORNA WALE BRUSH HEAD	2
SH100829	ORNA RETRACTABLE CORNER 27	40
SH100827	ORNA RETRACTABLE CORNER 27	8

AS of 2/10/2018

### Summary ReRent Report

Parameters: Vendor: 116572

Material #	Description	Quantity
SR190872	NOELHARETEKTABLECORNERVP	32
SR2046	BARKET WHEW GATE	1
SR2050	HACK LARGE 4 X 6	3
SR2053	HACK BROAD 3 X 6	11
SR215	FRAME ALUMAGS 10' X 10' X 10' BR ASM	820
SR216	FRAME ALUMAGS 10' X 10' X 10' BR ASM	1610
SR2186	BRACE 2X4 X 10' SH	1600
SR2200	BRACE 2X4 X 4'	5000
SR2203	BRACE 2X4 X 4'	2150
SR2205	BRACE 2X4 X 4'	475
SR22063	DOUBLEYRHEADTWOX4X4	750
SR2207	BRACE 2X4 X 10' X 10' X 10'	1000
SR2213	BRACE 2X4 X 4'	475
SR221010	ALUPROE 10' X 10'	2120
SR221020	ALUPROE 10' X 10'	2113
SR221030	ALUPROE 10' X 10'	1000
SR221040	UNIVERSAL TRIPPO C24	31
SR221050	BRACE FRAME 10' X 10'	652
SR221060	BRACE FRAME 10' X 10'	682
SR221070	BRACE FRAME 10' X 10'	220
SR221080	BRACE FRAME 10' X 10'	208
SR234	TRUSS 2X4 X 10'	10400
SR2457	FRAME ALUMAGS ACBENORCEFO	195
SR257	FRAME ALUMAGS 10' X 10' X 10'	2174
SR258	FRAME ALUMAGS 10' X 10' X 10'	2454
SR259	FRAME ALUMAGS 10' X 10' X 10'	652
SR261	CONNECTOR HUB FRAME ALUMAGS	500
SR275	BEAT BASE	10361
SR357	TRUSS JACK 12' X 10' X 10'	600
SR358	TRUSS TENSION LEGS OVER FT	600
SR364	TRUSS CROSS BRACE 10' X 10'	160
SR370	TRUSS CROSS BRACE 10' X 10'	250
SR3901	RIVER	3388
SR4043	RIV BUSH	2300
SR4357	TRUSS JACK RETAINER	600
SR5181	SCREW JACK 10' X 10' X 10'	3000
SR5180	1 HEAD FOR TR JACK	60
SR521	SCREW JACK 10' X 10' X 10'	21354
SR560	ALUMAGS HEAD BEAM 10' X 10'	45
SR561	HEAVY DUTY GALV SHORE 8' X 10' X 10'	6605
SR562	BEAM ALUMAGS 10' X 10'	1200
SR6106	POST SHORE EXTENSION 2'	1085
SR7438	SCREW JACK 10' X 10' X 10'	188



05/01/0200

### Summary Report

Parameter: Vendor: 10000

Material #	Description	Quantity
8838970	STAINLESS STEEL PIPE 20MM	65
8838971	TRIP PIN SCREW 4 X 100	25
8838972	STAINLESS STEEL PIPE 20MM	23
8838973	STAINLESS STEEL PIPE 20MM	30
8838974	STAINLESS STEEL PIPE 20MM	20
8838975	STAINLESS STEEL PIPE 20MM	12
8838976	STAINLESS STEEL PIPE 20MM	5
8838977	STAINLESS STEEL PIPE 20MM	60
8838978	SYSTEM RACK SMALL	1
8838979	STAINLESS STEEL PIPE 20MM	10
8838980	STAINLESS STEEL PIPE 20MM	8
8838981	STAINLESS STEEL PIPE 20MM	20
<b>Total</b>		<b>145346</b>
<b>Vendor Total</b>		<b>145346</b>
<b>Report Total</b>		<b>145346</b>

**SCHEDULE B****SARAMIA CRESCENT PROPERTY DETAILS**

**PIN:** 03276 - 0174 LT

**Description:** PCL 11-1 SEC 65M2724; BLK 11 PL 65M2724; S/T LT590331; S/T LT579695  
VAUGHAN

**Address:** 131 Saramia Crescent, Vaughan, Ontario



**SCHEDULE C**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[RECEIVER'S NAME], solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

**BRIDGING FINANCE INC., as  
agent for 2665405 ONTARIO INC.**

**1033803 ONTARIO INC. and 1087507 ONTARIO LIMITED**

Court File No.: CV-18-608978-00CL

Applicant

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER  
(Receivership Application)**

**Goodmans LLP**  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

**Howard Wise (LSO#: 25190F)**  
**Christopher G. Armstrong (LSO#: 55148B)**

Tel: 416.979.2211  
Fax: 416.979.1234

Lawyers for the Applicant

This is Exhibit "3" referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



---

A commissioner for taking Affidavits



**MILLER THOMSON**  
AVOCATS | LAWYERS

**MILLER THOMSON LLP**  
VAUGHAN METROPOLITAN CENTRE  
110 NEW PARK PLACE, SUITE 700  
VAUGHAN, ON L4J 0H9  
CANADA

T 905.532.6600  
F 905.660.0139

MILLERTHOMSON.COM

December 21, 2018

**Without Prejudice**

**Private and Confidential**

**Sent via E-mail**

Bobby Kofman and Noah Goldstein  
KSV Advisory Inc.  
150 King Street West, Suite 2308  
Toronto, ON M5H 1J9

**Michael Farace**  
Direct Line: 905.532.6618  
Direct Fax: 905.660.0139  
mfarace@millerthomson.com

File: 0210163 0003

Dear Sirs:

**Re: Construction Contract in respect of Massey Tower located at 197 Yonge Street, Toronto ("Project")**

Please be advised that we are the lawyers that represent the owner of the above-noted Project, MOD Developments (197 Yonge) Limited Partnership ("MOD").

We understand that you are the Receiver appointed pursuant to the court order issued by the Ontario Superior Court of Justice dated November 19, 2018 in Court File No. CV-18-608978-00CL (the "Court Order"). KSV has not advised who their lawyer is in relation to the Project. Please advise who that is.

It has just come to our attention that, in fact, the November 19, 2018 Court Order made under Court File CV-18-608978-00CL appointing KSV as Receiver of two companies pertains to two companies, neither of which is the counterparty to MOD's contract with respect to the Project. Attached hereto is a copy of the signature page of the Contract. In

fact the Contract is between MOD and Forma-Con Construction a division of 1428502 Ontario Limited ("142"). Clearly, the party to our client's Contract operating as Forma-Con, 142, is not a corporation over which you have capacity as Receiver and Manager, since it is not named in the Court Order. We will further review, with MOD, the actions taken by KSV in relation to the Project and the Contract in light of KSV's lack of jurisdiction.



This letter is Without Prejudice but we, alone, reserve the right to choose to withdraw the Without Prejudice designation.

Yours truly,

MILLER THOMSON LLP

Per:



Michael Farace  
MF/ps



ARTICLE A-9 SUCCESSION

9.1 The Contract shall endure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

In witness whereof the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED

In the presence of:

WITNESS

signature of witness

name of person signing

signature of witness

name of person signing

OWNER

MOD Developments (197 Yonge) Limited Partnership

name of Owner

signature

Noorez Lalani, Vice President

name and title of person signing

signature

Gary Switzer, President

name and title of person signing

WITNESS

signature of witness

name of person signing

signature of witness

name of person signing

TRADE CONTRACTOR

Forma-Con Construction ( A DIVISION OF 1428502 ONTARIO LIMITED)

name of Trade Contractor

signature

Michael Solano, President

name and title of person signing

signature

name and title of person signing

NB Where legal jurisdiction, local practice or Owner or Trade Contractor requirement calls for:
(a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or
(b) the affixing of a corporate seal, this Agreement should be properly sealed.

6 Note: This contract is protected by copyright. Use of a CCDC 17 document not containing a CCDC 17 copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 17 copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 17 - 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions. CCDC 17 - 2010



This is Exhibit "4" referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



---

A commissioner for taking Affidavits



Court File No.

CV-19-00616137-0000

ONTARIO

## SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE *CONSTRUCTION ACT*, R.S.O. 1990, C. c-30

BETWEEN:

KSV KOFMAN INC. in its capacity as Court-appointed receiver and manager, without security, of all of the assets, undertakings and properties of 1033803 ONTARIO INC., operating as Forma-Con Construction and Forma Finishing ("Forma-Con"), and 1087507 ONTARIO INC. (together with Forma-Con, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors

Plaintiff

- and -

MOD DEVELOPMENTS (197 YONGE) LIMITED PARTNERSHIP

Defendant



## STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

~~Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.~~

- 2 -

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date March 13, 2019 Issued by R. Sipidicus.  
Local Registrar

Address of  
court office: 393 University Ave., 10th Floor  
Toronto, ON  
M5G 1E6

TO: REGISTRAR, SUPERIOR COURT OF JUSTICE  
393 University Ave., 10th Floor  
Toronto, ON  
M5G 1E6

AND TO: MOD DEVELOPMENTS (197 YONGE) LIMITED PARTNERSHIP  
8 Price Street, 4th Floor  
Toronto, ON  
M4W 1Z4

AND/OR

550 Burrard Street, Suite #600  
Vancouver, BC  
V6C 2B5

- 3 -

## CLAIM

1. The plaintiff claims:
  - (a) a declaration that it has a lien (the "Lien") in the amount of \$ 2,038,704.26 pursuant to the *Construction Act*, R.S.O. 1990, c. C.30, as amended;
  - (b) damages of \$2,038,704.26 plus any additional applicable taxes, to be paid by the defendant;
  - (c) an order, if necessary, that payment of the damages be made from the security posted with the Accountant of the Superior Court of Justice to vacate the Lien (the "Security");
  - (d) pre-judgment and post-judgment interest in accordance with the Contract (as defined below) or in the alternative in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (e) payment of its costs of this action;
  - (f) for the purposes set out above, and for all other purposes, that all proper directions be given, inquiries made and accounts taken; and
  - (g) such further and other relief as the Court may deem just.

**The Parties**

2. KSV Kofman Inc. ("KSV") was appointed as receiver and manager, without security, of:
  - (i) all of the assets, undertakings and properties of 1033803 Ontario Inc., operating as Forma-Con Construction and Forma Finishing ("Forma-Con"), and 1087507 Ontario Inc. (together with Forma-Con, the "Debtors") acquired for, or used in relation to a business carried on by the

- 4 -

Debtors; (ii) certain specific assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd; and (iii) the real property known municipally as 131 Saramia Crescent in Vaughan, Ontario (KSV, in such capacity, the "Receiver"), by order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) dated November 19, 2018 (the "Order").

3. Forma-Con is a construction contractor based in Concord, Ontario.

4. MOD Developments (197 Yonge) Limited Partnership ("197 Yonge LP") is the developer of the Massey Tower, a 60-storey condominium tower (the "Project") under development at 197 Yonge Street, Toronto, Ontario (the "Site").

#### **The Contract**

5. On or about December 19, 2014, Forma-Con entered into a contract with 197 Yonge LP (the "Contract") whereby Forma-Con agreed to provide work and materials in connection with the Project. The work and materials that Forma-Con agreed to provide included concrete forming and falsework, void forming, concrete placing and finishing, temporary shoring, hoisting, coordination management of rebar placement, and the supply and installation of concrete accessories. The contract price, including applicable taxes, was \$23,084,770.

6. Forma-Con continues to supply work and materials on the Project.

#### **The Receiver's Lien**

7. As of December 14, 2018, Forma-Con had made improvements to the Site valued at \$2,038,704.26 for which it has not been paid. 197 Yonge LP is indebted to Forma-Con for the sum of \$2,038,704.26.

- 5 -

8. This amount is due and owing. The Receiver has made a demand for payment on behalf of Forma-Con, which payment has not been made. The failure by the defendant to pay this amount is a breach of the Contract.

9. In the alternative, the Receiver is entitled to compensation on a *quantum meruit* basis as against the defendant.

10. By reason of Forma-Con supplying the services and materials that it did, Forma-Con has enhanced the value of the Site and enriched the defendant. The defendant has received the benefit of this enhancement and has been unjustly enriched by the amount of the Receiver's claim. The Receiver therefore seeks restitution on the basis of unjust enrichment.

11. By reason of performing the work described above, Forma-Con became and is entitled to a lien upon the estate or interest of the owner of the Site. On February 13, 2019, the Receiver caused to be registered in the Land Titles Office for the Land Titles Division of Toronto (No. 80) at Toronto, as instrument no. AT5076132, a claim for lien on the Site for \$2,038,704.26. A copy of the claim for lien is attached to this statement of claim as Schedule "A."

12. The Site is described in the claim for lien as:

PIN	21098 - 0011 LT
Description	PCL 8-30 SEC Y2; PT PARKLT 8 CON 1 FTB TWP OF YORK PT 6 AND 7, 66R15815; T/W PT PARKLT 8 CON 1 FTB TWP OF YORK, PT 8, 66R15815 AS IN LT89861, S/T AND EASEMENT OVER PTS 6 AND 7 ON PL 66R15815 AS IN AT3692232; TORONTO, CITY OF TORONTO; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF LT 8 W/S VICTORIA ST, 9 W/S VICTORIA ST, 10 W/S VICTORIA ST PL 22A AS IN AT3631950; SUBJECT TO AN EASEMENT OVER PART 26

- 6 -

ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1  
FTB TWP OF YORK;  
PT LT 7 W/S VICTORIA ST PL 22A TORONTO AS IN  
EP62953 & EP69249 AS IN AT3631950;  
SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN  
66R27069 IN FAVOUR OF PT LT 7 W/S VICTORIA ST PL  
22A TORONTO AS IN EP12249 (FIRSTLY) AS IN AT3631950;  
SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN  
66R27069 IN FAVOUR OF PART OF PARK LOT 8,  
CONCESSION 1 FROM THE BAY AND PART OF LOTS 6  
AND 7 ON W/S VICTORIA STREET, PLAN 22A,  
DESIGNATED AS PARTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 39, 43, 44, 45,  
46, 47, 54, 55, 56 ON PLAN 66R27069 AS IN AT3631950;  
SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN  
66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF  
YORK AS IN CA706172 AS IN AT3631989;  
SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN  
66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF  
YORK PT 3 AND 4, 66R15002 AS IN AT3631989;  
SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN  
66R27069 IN FAVOUR OF PART OF LOT 2 AND PART OF  
LOT 3, 4 & 5 (ALL ON THE WEST SIDE OF VICTORIA  
STREET) REGISTERED PLAN 22A AND PART OF PARK  
LOT NO. 8, CONCESSION 1 FROM THE BAY, TOWNSHIP  
OF YORK BEING PART 1, 4 AND 6 ON PLAN 66R13172 AS  
IN AT3631989;  
SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN  
66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF  
YORK PT 2, 3 AND 5, 66R13172 AND PT 5, 66R14431 AS IN  
AT3631989;  
SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN  
66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF  
YORK;  
PT LT 6 W/S VICTORIA ST PL 22A TORONTO PARTS 2 AN 3  
ON PLAN 63R3426 AS IN AT3631989;  
TOGETHER WITH AN EASEMENT OVER PART OF PARK  
LOT 8, CONCESSION 1 FROM THE BAY AND PART OF  
LOTS 6 AND 7 ON W/S VICTORIA STREET, PLAN 22A,  
DESIGNATED AS DESIGNATED AS PARTS 1, 2, 3, 4, 5, 6, 7,  
8 ,9, 39, 43, 44, 45, 46, 47, 54, 55 AND 56 ON PLAN 66R27069  
AS IN AT3632053;  
TOGETHER WITH AN EASEMENT OVER PT PARKLT 8  
CON 1 FTB TWP OF YORK;  
PART OF LOTS 6 & 7 W/S VICTORIA ST PL 22A,  
DESIGNATED AS PARTS 2, 6 & 39 ON PLAN 66R27069 AS  
IN AT3631744;

- 7 -

TOGETHER WITH AN EASEMENT OVER PT PARKLT 8  
 CON 1 FTB TWP OF YORK;  
 PT LT 6 W/S VICTORIA ST PL 22A, DESIGNATED AS  
 PARTS 4 & 5 ON PLAN 66R27069 AS IN AT3631744;  
 TOGETHER WITH AN EASEMENT OVER PT PARKLT 8  
 CON 1 FTB TWP OF YORK;  
 PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS  
 PARTS 43, 44 & 45 ON PLAN 66R27069 AS IN AT3631744;  
 TOGETHER WITH AN EASEMENT OVER PT PARKLT 8  
 CON 1 FTB TWP OF YORK DESIGNATED AS PART 43 ON  
 PLAN 66R27069 AS IN AT3631744;  
 TOGETHER WITH AN EASEMENT OVER PT PARKLT 8  
 CON 1 FTB TWP OF YORK, DESIGNATED AS PART 43 ON  
 PLAN 66R27069 AS IN AT3631744;  
 TOGETHER WITH AN EASEMENT OVER PT PARKLT 8  
 CON 1 FTB TWP OF YORK;  
 PT LT 7 W/S VICTORIA ST, PLAN 22A, DESIGNATED AS  
 PART 44 ON PLAN 66R27069 AS IN AT3631744;  
 TOGETHER WITH AN EASEMENT OVER PT PARKLT 8  
 CON 1 FTB TWP OF YORK;  
 PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PAR  
 44 ON PLAN 66R27069 AS IN AT3631744;  
 TOGETHER WITH AN EASEMENT OVER PT LT 7 W/S  
 VICTORIA ST, PL 22A, DESIGNATED AS PART 45 ON PLAN  
 66R27069 AS IN AT3631744;  
 TOGETHER WITH AN EASEMENT OVER PT PARKLT 8  
 CON 1 FTB TWP OF YORK;  
 PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED A PARTS  
 43, 44 & 45 ON PLAN 66R27069 AS IN AT3631744;  
 TOGETHER WITH AN EASEMENT OVER PART 5 ON PLAN  
 63R-4643 AS IN AT3757274;  
 SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN  
 66R27069 IN FAVOUR OF PART PARK LOT 8 CONCESSION  
 1 FTB TWP OF YORK AS IN CA706172 AS IN AT3631989;  
 SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN  
 66R27069 IN FAVOUR OF PART OF PARK LOT 8  
 CONCESSION 1 FT TWP OF YORK PARTS 3 AND 4 ON  
 PLAN 66R15002 AS IN AT3631989

Address	TORONTO
PIN	21098 - 0013 LT
Description	PCL 100 SEC M TORONTO; PT PARKLT 8 CON 1 FTB TWP OF YORK E/S YONGE ST; PT 1, 2 AND 8, 66R15815, S/T PT 8, 66R15815 AS IN LT89861



- 8 -

PARTIALLY RELEASED AND ABANDONED BY C468580;  
T/W PT 9, 66R15815 AS IN LT89861;  
S/T AN EASEMENT OVER PTS 1, 2 AND 8 ON PL 66R15815  
AS IN AT3692232; TORONTO, CITY OF TORONTO;  
SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON  
PLAN 66R27069 IN FAVOUR OF LT 8 W/S VICTORIA ST, 9  
W/S VICTORIA ST, 10 W/S VICTORIA ST PL 22A AS IN  
AT3631950;  
SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON  
PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB  
TWP OF YORK;  
PT LT 7 W/S VICTORIA ST PL 22A TORONTO AS IN  
EP62953 & EP69249 AS IN AT3631950;  
SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON  
PLAN 66R27069 IN FAVOUR OF PT LT 7 W/S VICTORIA ST  
PL 22A TORONTO AS IN EP12249 (FIRSTLY) AS IN  
AT3631950;  
SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON  
PLAN 66R27069 IN FAVOUR OF PART OF PARK LOT 8,  
CONCESSION 1 FROM THE BAY AND PART OF LOTS 6  
AND 7 ON W/S VICTORIA STREET, PLAN 22A,  
DESIGNATED AS PARTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 39, 43, 44, 45,  
46, 47, 54, 55, 56 ON PLAN 66R27069 AS IN AT3631950;  
TOGETHER WITH AN EASEMENT OVER PART OF PARK  
LOT 8, CONCESSION 1 FROM THE BAY AND PART OF  
LOTS 6 AND 7 ON W/S VICTORIA STREET, PLAN 22A,  
DESIGNATED AS DESIGNATED AS PARTS 1, 2, 3, 4, 5, 6, 7,  
8, 9, 39, 43, 44, 45, 46, 47, 54, 55 AND 56 ON PLAN 66R27069  
AS IN AT3632053;  
TOGETHER WITH AN EASEMENT OVER PT PARKLT 8  
CON 1 FTB TWP OF YORK; PART OF LOTS 6 & 7 W/S  
VICTORIA ST PL 22A, DESIGNATED AS PARTS 2, 6 & 39  
ON PLAN 66R27069 AS IN AT3631744;  
TOGETHER WITH AN EASEMENT OVER PT PARKLT 8  
CON 1 FTB TWP OF YORK; PT LT 6 W/S VICTORIA ST PL  
22A, DESIGNATED AS PARTS 4 & 5 ON PLAN 66R27069 AS  
IN AT3631744;  
TOGETHER WITH AN EASEMENT OVER PT PARKLT 8  
CON 1 FTB TWP OF YORK;  
PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS  
PARTS 43, 44 & 45 ON PLAN 66R27069 AS IN AT3631744;  
TOGETHER WITH AN EASEMENT OVER PT PARKLT 8  
CON 1 FTB TWP OF YORK DESIGNATED AS PART 43 ON  
PLAN 66R27069 AS IN AT3631744;  
TOGETHER WITH AN EASEMENT OVER PT PARKLT 8  
CON 1 FTB TWP OF YORK, DESIGNATED AS PART 43 ON

- 9 -

PLAN 66R27069 AS IN AT3631744;  
TOGETHER WITH AN EASEMENT OVER PT PARKLT 8  
CON 1 FTB TWP OF YORK;  
PT LT 7 W/S VICTORIA ST, PLAN 22A, DESIGNATED AS  
PART 44 ON PLAN 66R27069 AS IN AT3631744;  
TOGETHER WITH AN EASEMENT OVER PT PARKLT 8  
CON 1 FTB TWP OF YORK;  
PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PART  
44 ON PLAN 66R27069 AS IN AT3631744;  
TOGETHER WITH AN EASEMENT OVER PT LT 7 W/S  
VICTORIA ST, PL 22A, DESIGNATED AS PART 45 ON PLAN  
66R27069 AS IN AT3631744;  
TOGETHER WITH AN EASEMENT OVER PT PARKLT 8  
CON 1 FTB TWP OF YORK;  
PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS  
PARTS 43, 44 & 45 ON PLAN 66R27069 AS IN AT3631744;  
SUBJECT TO AN EASEMENT OVER PART 42 ON PLAN  
66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF  
YORK AS IN CA706172 AS IN AT3631989;  
SUBJECT TO AN EASEMENT OVER PART 42 ON PLAN  
66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF  
YORK PT 3 AND 4, 66R15002 AS IN AT3631989;  
SUBJECT TO AN EASEMENT OVER PART 42 ON PLAN  
66R27069 IN FAVOUR OF PART OF LOT 2 AND PART OF  
LOT 3, 4 & 5 (ALL ON THE WEST SIDE OF VICTORIA  
STREET) REGISTERED PLAN 22A AND PART OF PARK  
LOT NO. 8, CONCESSION 1 FROM THE BAY, TOWNSHIP  
OF YORK BEING PART 1, 4 AND 6 ON PLAN 66R13172 AS  
IN AT3631989;  
SUBJECT TO AN EASEMENT OVER PART 42 ON PLAN  
66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF  
YORK PT 2, 3 AND 5, 66R13172 AND PT 5, 66R14431 AS IN  
AT3631989;  
SUBJECT TO AN EASEMENT OVER PART 42 ON PLAN  
66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF  
YORK;  
PT LT 6 W/S VICTORIA ST PL 22A TORONTO PARTS 2 AND  
3 ON PLAN 63R3426 AS IN AT3631989;  
SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON  
PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB  
TWP OF YORK AS IN CA706172 AS IN AT3631989;  
SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON  
PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB  
TWP OF YORK PT 3 AND 4, 66R15002 AS IN AT3631989;  
SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON  
PLAN 66R27069 IN FAVOUR OF PART OF LOT 2 AND PART

- 10 -

OF LOT 3, 4 & 5 (ALL ON THE WEST SIDE OF VICTORIA STREET) REGISTERED PLAN 22A AND PART OF PARK LOT NO. 8, CONCESSION 1 FROM THE BAY, TOWNSHIP OF YORK BEING PART 1, 4 AND 6 ON PLAN 66R13172 AS IN AT3631989;

SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 2, 3 AND 5, 66R13172 AND PT 5, 66R14431 AS IN AT3631989;

SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK;

PT LT 6 W/S VICTORIA ST PL 22A TORONTO PARTS 2 AND 3 ON PLAN 63R3426 AS IN AT3631989;

SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK AS IN CA706172 AS IN AT3631989;

SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 3 AND 4, 66R15002 AS IN AT3631989;

SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PART OF LOT 2 AND PART OF LOT 3, 4 & 5 (ALL ON THE WEST SIDE OF VICTORIA STREET) REGISTERED PLAN 22A AND PART OF PARK LOT NO. 8, CONCESSION 1 FROM THE BAY, TOWNSHIP OF YORK BEING PART 1, 4 AND 6 ON PLAN 66R13172 AS IN AT3631989;

SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 2, 3 AND 5, 66R13172 AND PT 5, 66R14431 AS IN AT3631989;

SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK;

PT LT 6 W/S VICTORIA ST PL 22A TORONTO PARTS 2 AND 3 ON PLAN 63R3426 AS IN AT3631989;

TOGETHER WITH AN EASEMENT OVER PART 5 ON PLAN 63R-4643 AS IN AT3757274

ADDRESS	TORONTO
PIN	21098 - 0085 LT
DESCRIPTION	PT PARKLT 8 CON 1 FTB TWP OF YORK PT 5 63R4643 T/W CA797973; CITY OF TORONTO; SUBJECT TO AN EASEMENT OVER

- 11 -

PART 5 PLAN 63R-4643 IN FAVOUR OF PARTS 6 & 7 ON  
 PLAN 66R-15815 AS IN AT3757274;  
 SUBJECT TO AN EASEMENT OVER PART 5 PLAN 63R-4643  
 IN FAVOUR OF PARTS 1, 2 & 8 PLAN 66R-15815 AS IN  
 AT3757274;  
 SUBJECT TO AN EASEMENT OVER PART 5 PLAN 63R-4643  
 IN FAVOUR OF PARTS 11, 12, 19M 20, 21, 22, 23, 24, 32, 34,  
 35, 37, 38, 40, 41, 52, 53, 57, 58, 59, 60, 61 & 62 ON PLAN 66R-  
 27069 AS IN AT3757274;  
 CITY OF TORONTO

ADDRESS 205 YONGE ST  
 TORONTO

PIN 21098 - 0198 LT

DESCRIPTION UNNAMED LANE PL 22A TORONTO BTN YONGE ST &  
 VICTORIA ST, S OF SHUTER ST;  
 PT PARKLT 8 CON 1 FTB TWP OF YORK AS IN OS15022;  
 BEING ST. ENOCH'S SQUARE; CITY OF TORONTO

ADDRESS TORONTO

PIN 21098 - 0201 LT

DESCRIPTION PT PARKLT 8 CON 1 FTB TWP OF YORK;  
 PT LT 7 W/S VICTORIA ST PL 22A TORONTO AS IN  
 EP62953 & EP69249; CITY OF TORONTO;  
 TOGETHER WITH AN EASEMENT OVER PCL 8-30 SEC Y2;  
 PT PARKLT 8 CON 1 FTB TWP OF YORK DESIGNATED AS  
 PART 26 ON PLAN 66R27069 AS IN AT3631950;  
 TOGETHER WITH AN EASEMENT OVER PCL 100 SEC M  
 TORONTO; PT PARKLT 8 CON 1 FTB TWP OF YORK E/S  
 YONGE ST DESIGNATED AS PARTS 14 AND 17 ON PLAN  
 66R27069 AS IN AT3631950;  
 TOGETHER WITH AN EASEMENT OVER PART OF PARK  
 LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS  
 PARTS 34, 35, 37, 38, 40, 41, 52, 57, 58, 59, 60 AND 61,  
 66R27069 AS IN AT3632036;  
 TOGETHER WITH AN EASEMENT OVER PART OF PARK  
 LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS  
 PARTS 20, 23, 35, 38 & 53 ON PLAN 66R27069 AS IN  
 AT3631950;  
 TOGETHER WITH AN EASEMENT OVER PART OF PARK  
 LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS  
 PARTS 34, 35, 37, 40, 41 & 52 ON PLAN 66R27069 AS IN

- 12 -

AT3631950;  
 TOGETHER WITH AN EASEMENT OVER PART OF PARK  
 LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS  
 PARTS 35, 38 & 57 ON PLAN 66R27069 AS IN AT3631950;  
 TOGETHER WITH AN EASEMENT OVER PART OF PARK  
 LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS  
 PART 58 ON PLAN 66R27069 AS IN AT3631950;  
 TOGETHER WITH AN EASEMENT OVER PART OF PARK  
 LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS  
 PARTS 35, 38, 57, 60 & 61 ON PLAN 66R27069 AS IN  
 AT3631950

ADDRESS TORONTO

PIN 21098 - 0282 LT

DESCRIPTION PART PARKLT 8 CONCESSION 1 FTB (TWP OF YORK)  
 PARTS 1 TO 9 PLAN 66R30428;  
 S/T EASEMENT OVER PART 1 PLAN 66R30428 AS IN  
 CA630197E;  
 S/T EASEMENT OVER PARTS 1 TO 9 PLAN 66R30428 AS IN  
 AT3692232;  
 S/T EASEMENT OVER PARTS 3, 4, 5 & 7 PLAN 66R30428 IN  
 AT3631950;  
 S/T EASEMENT OVER PARTS 3, 4 & 7 PLAN 66R30428 AS  
 IN AT3631989;  
 S/T EASEMENT OVER PARTS 5, 6 & 7 PLAN 66R30428 AS  
 IN AT3632036;  
 TOGETHER WITH AN EASEMENT OVER PART PARKLOT 8  
 CONCESSION 1 FTB (YORK) AND PART LOTS 6 & 7 W/S  
 VICTORIA ST PLAN 22A, PART 10 PLAN 66R30428 AS IN  
 AT3631744;  
 TOGETHER WITH AN EASEMENT OVER PART PARKLOT 8  
 CONCESSION 1 FTB (YORK) AND PART LOTS 6 & 7 W/S  
 VICTORIA ST PLAN 22A, PARTS 10 & 11 PLAN 66R30428  
 AS IN AT3632053;  
 TOGETHER WITH AN EASEMENT OVER PART PARKLOT 8  
 CONCESSION 1 FTB (TWP OF YORK), PART 12 PLAN  
 63R4643 AS IN AT3757274; CITY OF TORONTO

ADDRESS TORONTO

13. The Lien was vacated by order of Master Wiebe dated February 21, 2019 after the Security of \$2,038,704.26 plus costs was posted with the Accountant of the Ontario Superior

- 13 -

Court of Justice. The plaintiff is entitled to be paid from the Security, if the defendant fails to pay the amount due. The Receiver relies upon s. 44(6) of the *Construction Act*.

14. The Receiver proposes that the action be tried at Toronto.

March 13, 2019

**Torys LLP**  
Suite 3000  
79 Wellington St. W.  
Box 270, TD Centre  
Toronto, ON M5K 1N2  
Fax: 416.865.7380  
David Outerbridge (LSUC #: 42724V)  
Tel: 416.865.7825  
Lawyers for the Plaintiff

## Schedule "A"

LRO # 80 Construction Lien

Registered as AT6076132 on 2019 02 13 at 15:58

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 12

Properties	
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PIN	21098 - 0013 LT
Description	<p>PCL 100 SEC M TORONTO; PT PARKLT 8 CON 1 FTB TWP OF YORK E/S YONGE ST; PT 1, 2 AND 8, 66R15815, S/T PT 8, 66R15815 AS IN LT88861 PARTIALLY RELEASED AND ABANDONED BY C488580; TWP PT 9, 66R15815 AS IN LT88861; S/T AN EASEMENT OVER PTS 1, 2 AND 8 ON PL 66R15815 AS IN AT3892232; TORONTO, CITY OF TORONTO; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF LT 8 W/S VICTORIA ST, 9 W/S VICTORIA ST, 10 W/S VICTORIA ST PL 22A AS IN AT3831950; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST PL 22A TORONTO AS IN EP82953 &amp; EP89248 AS IN AT3831950; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT LT 7 W/S VICTORIA ST PL 22A TORONTO AS IN EP12249 (FIRSTLY) AS IN AT3831950; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY AND PART OF LOTS 6 AND 7 ON W/S VICTORIA STREET, PLAN 22A, DESIGNATED AS PARTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 39, 43, 44, 45, 46, 47, 54, 55, 58 ON PLAN 66R27069 AS IN AT3831950; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY AND PART OF LOTS 6 AND 7 ON W/S VICTORIA STREET, PLAN 22A, DESIGNATED AS PARTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 39, 43, 44, 45, 46, 47, 54, 55 AND 58 ON PLAN 66R27069 AS IN AT3832053; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PART OF LOTS 6 &amp; 7 W/S VICTORIA ST PL 22A, DESIGNATED AS PARTS 2, 6 &amp; 39 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 6 W/S VICTORIA ST PL 22A, DESIGNATED AS PARTS 4 &amp; 5 ON PLAN 66R27069 AS IN AT3831744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PARTS 43, 44 &amp; 45 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK DESIGNATED AS PART 43 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK, DESIGNATED AS PART 43 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST, PLAN 22A, DESIGNATED AS PART 44 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PART 44 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PART 45 ON PLAN 66R27069 AS IN AT3831744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PARTS 43, 44 &amp; 45 ON PLAN 66R27069 AS IN AT3831744; SUBJECT TO AN EASEMENT OVER PART 42 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK AS IN CA708172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 42 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 3 AND 4, 68R15002 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 42 ON PLAN 66R27069 IN FAVOUR OF PART OF LOT 2 AND PART OF LOT 3, 4 &amp; 5 (ALL ON THE WEST SIDE OF VICTORIA STREET) REGISTERED PLAN 22A AND PART OF PARK LOT NO. 8, CONCESSION 1 FROM THE BAY, TOWNSHIP OF YORK BEING PART 1, 4 AND 6 ON PLAN 66R13172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 42 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 2, 3 AND 5, 66R13172 AND PT 5, 68R14431 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 42 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 8 W/S VICTORIA ST PL 22A TORONTO PARTS 2 AND 3 ON PLAN 63R3426 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK AS IN CA708172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 3 AND 4, 68R15002 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PART OF LOT 2 AND PART OF LOT 3, 4 &amp; 5 (ALL ON THE WEST SIDE OF VICTORIA STREET) REGISTERED PLAN 22A AND PART OF PARK LOT NO. 8, CONCESSION 1 FROM THE BAY, TOWNSHIP OF YORK BEING PART 1, 4 AND 6 ON PLAN 66R13172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 6 W/S VICTORIA ST PL 22A TORONTO PARTS 2 AND 3 ON PLAN 63R3426 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK AS IN CA708172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 3 AND 4, 68R15002 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PART OF LOT 2 AND PART OF LOT 3, 4 &amp; 5 (ALL ON THE WEST SIDE OF VICTORIA STREET) REGISTERED PLAN 22A AND PART OF PARK LOT NO. 8, CONCESSION 1 FROM THE BAY, TOWNSHIP OF YORK BEING PART 1, 4 AND 6 ON PLAN 66R13172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 6 W/S VICTORIA ST PL 22A TORONTO PARTS 2 AND 3 ON PLAN 63R3426 AS IN</p>

LRO # 80 Construction Lien

Registered as AT5076132 on 2019 02 13 at 15:58

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 12

**Properties**

AT3631988; TOGETHER WITH AN EASEMENT OVER PART 5 ON PLAN 63R-4643 AS IN AT3757274

**Address** TORONTO

**PIN** 21098 - 0282 LT

**Description** PART PARKLT 8 CONCESSION 1 FTB (TWP OF YORK) PARTS 1 TO 9 PLAN 66R30428; S/T EASEMENT OVER PART 1 PLAN 66R30428 AS IN CA830197E; S/T EASEMENT OVER PARTS 1 TO 9 PLAN 66R30428 AS IN AT3692232; S/T EASEMENT OVER PARTS 3, 4, 5 & 7 PLAN 66R30428 IN AT3631950; S/T EASEMENT OVER PARTS 3, 4 & 7 PLAN 66R30428 AS IN AT3631989; S/T EASEMENT OVER PARTS 5, 6 & 7 PLAN 66R30428 AS IN AT3632036; TOGETHER WITH AN EASEMENT OVER PART PARKLOT 8 CONCESSION 1 FTB (YORK) AND PART LOTS 6 & 7 W/S VICTORIA ST PLAN 22A, PART 10 PLAN 66R30428 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PART PARKLOT 8 CONCESSION 1 FTB (YORK) AND PART LOTS 6 & 7 W/S VICTORIA ST PLAN 22A, PARTS 10 & 11 PLAN 66R30428 AS IN AT3632053; TOGETHER WITH AN EASEMENT OVER PART PARKLOT 8 CONCESSION 1 FTB (TWP OF YORK), PART 12 PLAN 63R4643 AS IN AT3757274; CITY OF TORONTO

**Address** TORONTO**PIN** 21098 - 0011 LT

**Description** PCL 8-30 SEC Y2; PT PARKLT 8 CON 1 FTB TWP OF YORK PT 6 AND 7, 66R15815; TWP PT PARKLT 8 CON 1 FTB TWP OF YORK, PT 8, 66R15815 AS IN LT89861, S/T AND EASEMENT OVER PTS 6 AND 7 ON PL 66R15815 AS IN AT3892232; TORONTO, CITY OF TORONTO; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF LT 8 W/S VICTORIA ST, 9 W/S VICTORIA ST, 10 W/S VICTORIA ST PL 22A AS IN AT3631950; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST PL 22A TORONTO AS IN EP62953 & EP69249 AS IN AT3631950; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PT LT 7 W/S VICTORIA ST PL 22A TORONTO AS IN EP12249 (FIRSTLY) AS IN AT3631950; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY AND PART OF LOTS 6 AND 7 ON W/S VICTORIA STREET, PLAN 22A, DESIGNATED AS PARTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 38, 43, 44, 45, 46, 47, 54, 55, 56 ON PLAN 66R27069 AS IN AT3631950; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK AS IN CA708172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 3 AND 4, 66R15002 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PART OF LOT 2 AND PART OF LOT 3, 4 & 5 (ALL ON THE WEST SIDE OF VICTORIA STREET) REGISTERED PLAN 22A AND PART OF PARK LOT NO. 8, CONCESSION 1 FROM THE BAY, TOWNSHIP OF YORK BEING PART 1, 4 AND 6 ON PLAN 66R13172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 2, 3 AND 5, 66R13172 AND PT 5, 66R14431 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 6 W/S VICTORIA ST PL 22A TORONTO PARTS 2 AND 3 ON PLAN 63R3428 AS IN AT3631989; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY AND PART OF LOTS 6 AND 7 ON W/S VICTORIA STREET, PLAN 22A, DESIGNATED AS DESIGNATED AS PARTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 39, 43, 44, 45, 46, 47, 54, 55 AND 58 ON PLAN 66R27069 AS IN AT3632053; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PART OF LOTS 6 & 7 W/S VICTORIA ST PL 22A, DESIGNATED AS PARTS 2, 6 & 38 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 8 W/S VICTORIA ST PL 22A, DESIGNATED AS PARTS 4 & 5 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PARTS 43, 44 & 45 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK DESIGNATED AS PART 43 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK, DESIGNATED AS PART 43 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST, PLAN 22A, DESIGNATED AS PART 44 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PART 44 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PART 45 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PARTS 43, 44 & 45 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PART 5 ON PLAN 63R-4643 AS IN AT3757274; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PART PARK LOT 8 CONCESSION 1 FTB TWP OF YORK AS IN CA708172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PART OF PARK LOT 8 CONCESSION 1 FTB TWP OF YORK PARTS 3 AND 4 ON PLAN 66R15002 AS IN AT3631989

**Address** TORONTO**PIN** 21098 - 0085 LT



LRO # 80 Construction Lien

Registered as AT5076132 on 2019 02 13 at 15:58

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 3 of 12

**Properties**

**Description** PT PARKLT 8 CON 1 FTB TWP OF YORK PT 5 63R4643 TWP CA797973; CITY OF TORONTO; SUBJECT TO AN EASEMENT OVER PART 5 PLAN 63R-4643 IN FAVOUR OF PARTS 6 & 7 ON PLAN 66R-15815 AS IN AT3757274; SUBJECT TO AN EASEMENT OVER PART 5 PLAN 63R-4643 IN FAVOUR OF PARTS 1, 2 & 8 PLAN 66R-15815 AS IN AT3757274; SUBJECT TO AN EASEMENT OVER PART 5 PLAN 63R-4643 IN FAVOUR OF PARTS 11, 12, 18M 20, 21, 22, 23, 24, 32, 34, 35, 37, 38, 40, 41, 52, 53, 57, 58, 59, 60, 61 & 62 ON PLAN 66R-27069 AS IN AT3757274; CITY OF TORONTO

**Address** 205 YONGE ST  
TORONTO

**PIN** 21098 - 0188 LT

**Description** UNNAMED LANE PL 22A TORONTO BTN YONGE ST & VICTORIA ST, S OF SHUTER ST; PT PARKLT 8 CON 1 FTB TWP OF YORK AS IN OS15022; BEING ST. ENOCH'S SQUARE; CITY OF TORONTO

**Address** TORONTO

**PIN** 21098 - 0201 LT

**Description** PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST PL 22A TORONTO AS IN EP82953 & EP89249; CITY OF TORONTO; TOGETHER WITH AN EASEMENT OVER PCL 8-30 SEC Y2; PT PARKLT 8 CON 1 FTB TWP OF YORK DESIGNATED AS PART 28 ON PLAN 66R27069 AS IN AT3831950; TOGETHER WITH AN EASEMENT OVER PCL 100 SEC M TORONTO; PT PARKLT 8 CON 1 FTB TWP OF YORK E/S YONGE ST DESIGNATED AS PARTS 14 AND 17 ON PLAN 66R27069 AS IN AT3831950; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS PARTS 34, 35, 37, 38, 40, 41, 52, 57, 58, 59, 60 AND 61, 66R27069 AS IN AT3832038; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS PARTS 20, 23, 35, 38 & 53 ON PLAN 66R27069 AS IN AT3831950; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS PARTS 34, 35, 37, 40, 41 & 52 ON PLAN 66R27069 AS IN AT3831950; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS PARTS 35, 38 & 57 ON PLAN 66R27069 AS IN AT3831950; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS PART 58 ON PLAN 66R27069 AS IN AT3831950; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS PARTS 35, 38, 57, 60 & 61 ON PLAN 66R27069 AS IN AT3831950

**Address** TORONTO

**Consideration**

Consideration \$2,038,704.28

**Claimant(s)**

**Name** FORMA-CON CONSTRUCTION

**Address for Service** Noah Goldstein  
KSV KOFMAN INC., in its capacity as  
Court-appointed receiver and manager  
of the claimant, and not in its personal or  
corporate capacity  
150 King Street West, Suite 2308, Box  
42  
Toronto, ON  
M5H 1J9

I, Noah Goldstein, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

I, Noah Goldstein, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Statements**

Name and Address of Owner See Schedule Name and address of person to whom lien claimant supplied services or materials MOD Developments (197 Yonge) Limited Partnership - 9 Price Street, 4th Floor Toronto, Ontario M4W 1Z4 Time within which services or materials were supplied from 2015/07/27 to 2019/02/12 Short description of services or materials that have been supplied Concrete forming and falsework, void forming, concrete placing and finishing, temporary shoring, hoisting, coordination management of the rebar placing contractor, and supply and installation of concrete accessories in connection with the construction of the condominium tower located at 197 Yonge Street, Toronto, Ontario. Contract price or subcontract price \$23,084,770 Amount claimed as owing in respect of services or materials that have been supplied \$2,038,704.28

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule. See Schedules

LRO # 80 Construction Lien

Registered as AT5076132 on 2019 02 13 at 15:58

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 4 of 12

**Signed By**

Brandi Nicole Tye	Suite 3000, 79 Wellington St. W Toronto M5K 1N2	acting for Applicant(s)	Signed	2019 02 13
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Tel 416-865-0040

Fax 416-865-7380

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

TORYS LLP	Suite 3000, 79 Wellington St. W Toronto M5K 1N2	2019 02 13
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Tel 416-865-0040

Fax 416-865-7380

**Fees/Taxes/Payment**

Statutory Registration Fee	\$64.40
Total Paid	\$64.40

**File Number**

Claimant Client File Number: 40383-0001 (DO/AB/AS/BT) MASSEY

Municipal Address	PIN	Legal Description	Registered Owner and Address of Service
197 Yonge Street, Toronto, ON	21098-0013(LT)	PCL 100 SEC M TORONTO; PT PARKLT 8 CON 1 FTB TWP OF YORK E/S YONGE ST; PT 1, 2 AND 8, 66R15815, S/T PT 8, 66R15815 AS IN LT89861 PARTIALLY RELEASED AND ABANDONED BY C468580; T/W PT 9, 66R15815 AS IN LT89861;S/T AN EASEMENT OVER PTS 1,2 AND 8 ON PL 66R15815 AS IN AT3692232; TORONTO , CITY OF TORONTO; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF LT 8 W/S VICTORIA ST, 9 W/S VICTORIA ST, 10 W/S VICTORIA ST PL 22A AS IN AT3631950; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST PL 22A TORONTO AS IN EP62953 & EP69249 AS IN AT3631950; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT LT 7 W/S VICTORIA ST PL 22A TORONTO AS IN EP12249 (FIRSTLY) AS IN AT3631950; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY AND PART OF LOTS 6 AND 7 ON W/S VICTORIA STREET, PLAN 22A, DESIGNATED AS PARTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 39, 43, 44, 45, 46, 47, 54, 55, 56 ON PLAN 66R27069 AS IN AT3631950; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 8 , CONCESSION 1 FROM THE BAY AND PART OF LOTS 6 AND 7 ON W/S VICTORIA STREET, PLAN 22A, DESIGNATED AS DESIGNATED AS PARTS 1, 2, 3, 4, 5, 6, 7, 8 ,9, 39, 43, 44, 45, 46, 47, 54, 55 AND 56 ON PLAN 66R27069 AS IN AT3632053; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PART OF LOTS 6 & 7 W/S VICTORIA ST PL 22A, DESIGNATED AS PARTS 2, 6 & 39 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 6 W/S VICTORIA ST PL 22A, DESIGNATED AS PARTS 4 & 5 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PARTS 43, 44 & 45 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK DESIGNATED AS PART 43 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER	<p><b>MOD DEVELOPMENTS (197 YONGE) INC.</b></p> <p>8 PRICE STREET 4TH FLOOR TORONTO, ON M4W 1Z4</p> <p>550 BURRARD STREET SUITE #600 VANCOUVER, BC V6C 2B5</p>

- 2 -

Municipal Address	PIN	Legal Description	Registered Owner and Address of Service
		<p>PT PARKLT 8 CON 1 FTB TWP OF YORK, DESIGNATED AS PART 43 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST, PLAN 22A, DESIGNATED AS PART 44 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PART 44 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PART 45 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PARTS 43, 44 &amp; 45 ON PLAN 66R27069 AS IN AT3631744; SUBJECT TO AN EASEMENT OVER PART 42 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK AS IN CA706172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 42 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 3 AND 4, 66R15002 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 42 ON PLAN 66R27069 IN FAVOUR OF PART OF LOT 2 AND PART OF LOT 3, 4 &amp; 5 (ALL ON THE WEST SIDE OF VICTORIA STREET) REGISTERED PLAN 22A AND PART OF PARK LOT NO. 8, CONCESSION 1 FROM THE BAY, TOWNSHIP OF YORK BEING PART 1, 4 AND 6 ON PLAN 66R13172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 42 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 2, 3 AND 5, 66R13172 AND PT 5, 66R14431 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 42 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 6 W/S VICTORIA ST PL 22A TORONTO PARTS 2 AND 3 ON PLAN 63R3426 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK AS IN CA706172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 3 AND 4, 66R15002 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PART OF</p>	

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Municipal Address	PIN	Legal Description	Registered Owner and Address of Service
		<p>LOT 2 AND PART OF LOT 3, 4 &amp; 5 (ALL ON THE WEST SIDE OF VICTORIA STREET) REGISTERED PLAN 22A AND PART OF PARK LOT NO. 8, CONCESSION 1 FROM THE BAY, TOWNSHIP OF YORK BEING PART 1, 4 AND 6 ON PLAN 66R13172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 2, 3 AND 5, 66R13172 AND PT 5, 66R14431 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 6 W/S VICTORIA ST PL 22A TORONTO PARTS 2 AND 3 ON PLAN 63R3426 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK AS IN CA706172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 3 AND 4, 66R15002 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PART OF LOT 2 AND PART OF LOT 3, 4 &amp; 5 (ALL ON THE WEST SIDE OF VICTORIA STREET) REGISTERED PLAN 22A AND PART OF PARK LOT NO. 8, CONCESSION 1 FROM THE BAY, TOWNSHIP OF YORK BEING PART 1, 4 AND 6 ON PLAN 66R13172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 2, 3 AND 5, 66R13172 AND PT 5, 66R14431 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PARTS 14 AND 17 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 6 W/S VICTORIA ST PL 22A TORONTO PARTS 2 AND 3 ON PLAN 63R3426 AS IN AT3631989; TOGETHER WITH AN EASEMENT OVER PART 5 ON PLAN 63R-4643 AS IN AT3757274</p>	
	21098-0282(LT)	<p>PART PARKLT 8 CONCESSION 1 FTB (TWP OF YORK) PARTS 1 TO 9 PLAN 66R30428; S/T EASEMENT OVER PART 1 PLAN 66R30428 AS IN CA630197E; S/T EASEMENT OVER PARTS 1 TO 9 PLAN 66R30428 AS IN AT3692232; S/T EASEMENT OVER PARTS 3, 4, 5 &amp; 7 PLAN 66R30428 IN AT3631950; S/T EASEMENT OVER PARTS 3, 4 &amp; 7 PLAN 66R30428 AS IN AT3631989; S/T EASEMENT OVER PARTS 5, 6</p>	<p>MOD DEVELOPMENTS (197 YONGE) INC.</p>

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Municipal Address	PIN	Legal Description	Registered Owner and Address of Service
		& 7 PLAN 66R30428 AS IN AT3632036;; TOGETHER WITH AN EASEMENT OVER PART PARKLOT 8 CONCESSION 1 FTB (YORK) AND PART LOTS 6 & 7 W/S VICTORIA ST PLAN 22A, PART 10 PLAN 66R30428 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PART PARKLOT 8 CONCESSION 1 FTB (YORK) AND PART LOTS 6 & 7 W/S VICTORIA ST PLAN 22A, PARTS 10 & 11 PLAN 66R30428 AS IN AT3632053; TOGETHER WITH AN EASEMENT OVER PART PARKLOT 8 CONCESSION 1 FTB (TWP OF YORK), PART 12 PLAN 63R4643 AS IN AT3757274; CITY OF TORONTO	8 PRICE STREET 4TH FLOOR TORONTO, ON M4W 1Z4  550 BURRARD STREET SUITE #600 VANCOUVER, BC V6C 2B5
	21098-0011(LT)	PCL 8-30 SEC Y2; PT PARKLT 8 CON 1 FTB TWP OF YORK PT 6 AND 7, 66R15815; T/W PT PARKLT 8 CON 1 FTB TWP OF YORK, PT 8, 66R15815 AS IN LT89861, S/T AND EASEMENT OVER PTS 6 AND 7 ON PL 66R15815 AS IN AT3692232; TORONTO , CITY OF TORONTO; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF LT 8 W/S VICTORIA ST, 9 W/S VICTORIA ST, 10 W/S VICTORIA ST PL 22A AS IN AT3631950; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST PL 22A TORONTO AS IN EP62953 & EP69249 AS IN AT3631950; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PT LT 7 W/S VICTORIA ST PL 22A TORONTO AS IN EP12249 (FIRSTLY) AS IN AT3631950; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY AND PART OF LOTS 6 AND 7 ON W/S VICTORIA STREET, PLAN 22A, DESIGNATED AS PARTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 39, 43, 44, 45, 46, 47, 54, 55, 56 ON PLAN 66R27069 AS IN AT3631950; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK AS IN CA706172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN	<b>MOD DEVELOPMENTS (197 YONGE) INC.</b>  8 PRICE STREET 4TH FLOOR TORONTO, ON M4W 1Z4  550 BURRARD STREET SUITE #600 VANCOUVER, BC V6C 2B5

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Municipal Address	PIN	Legal Description	Registered Owner and Address of Service
		<p>66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 3 AND 4, 66R15002 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PART OF LOT 2 AND PART OF LOT 3, 4 &amp; 5 (ALL ON THE WEST SIDE OF VICTORIA STREET) REGISTERED PLAN 22A AND PART OF PARK LOT NO. 8, CONCESSION 1 FROM THE BAY, TOWNSHIP OF YORK BEING PART 1, 4 AND 6 ON PLAN 66R13172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK PT 2, 3 AND 5, 66R13172 AND PT 5, 66R14431 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 6 W/S VICTORIA ST PL 22A TORONTO PARTS 2 AND 3 ON PLAN 63R3426 AS IN AT3631989; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY AND PART OF LOTS 6 AND 7 ON W/S VICTORIA STREET, PLAN 22A, DESIGNATED AS DESIGNATED AS PARTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 39, 43, 44, 45, 46, 47, 54, 55 AND 56 ON PLAN 66R27069 AS IN AT3632053; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PART OF LOTS 6 &amp; 7 W/S VICTORIA ST PL 22A, DESIGNATED AS PARTS 2, 6 &amp; 39 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 6 W/S VICTORIA ST PL 22A, DESIGNATED AS PARTS 4 &amp; 5 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PARTS 43, 44 &amp; 45 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK DESIGNATED AS PART 43 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK, DESIGNATED AS PART 43 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST, PLAN 22A, DESIGNATED AS PART 44 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S</p>	

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Municipal Address	PIN	Legal Description	Registered Owner and Address of Service
		VICTORIA ST, PL 22A, DESIGNATED AS PART 44 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PART 45 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST, PL 22A, DESIGNATED AS PARTS 43, 44 & 45 ON PLAN 66R27069 AS IN AT3631744; TOGETHER WITH AN EASEMENT OVER PART 5 ON PLAN 63R-4643 AS IN AT3757274; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PART PARK LOT 8 CONCESSION 1 FTB TWP OF YORK AS IN CA706172 AS IN AT3631989; SUBJECT TO AN EASEMENT OVER PART 26 ON PLAN 66R27069 IN FAVOUR OF PART OF PARK LOT 8 CONCESSION 1 FTB TWP OF YORK PARTS 3 AND 4 ON PLAN 66R15002 AS IN AT3631989	
	21098-0085(LT)	PT PARKLT 8 CON 1 FTB TWP OF YORK PT 5 63R4643 T/W CA797973; CITY OF TORONTO; SUBJECT TO AN EASEMENT OVER PART 5 PLAN 63R-4643 IN FAVOUR OF PARTS 6 & 7 ON PLAN 66R-15815 AS IN AT3757274; SUBJECT TO AN EASEMENT OVER PART 5 PLAN 63R-4643 IN FAVOUR OF PARTS 1, 2 & 8 PLAN 66R-15815 AS IN AT3757274; SUBJECT TO AN EASEMENT OVER PART 5 PLAN 63R-4643 IN FAVOUR OF PARTS 11, 12, 19M 20, 21, 22, 23, 24, 32, 34, 35, 37, 38, 40, 41, 52, 53, 57, 58, 59, 60, 61 & 62 ON PLAN 66R-27069 AS IN AT3757274; CITY OF TORONTO	<p>THE MIDAS INVESTMENT CORPORATION</p> <p>255C FISHER STREET, NORTH BAY, ON P1B 2C8</p> <p>OFFICE 8 WATERFORD ROAD, TRAMORE, CO WATERFORD, IRELAND</p>



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Municipal Address	PTN	Legal Description	Registered Owner and Address of Service
	21098-0198(LT)	UNNAMED LANE PL 22A TORONTO BTN YONGE ST & VICTORIA ST, S OF SHUTER ST; PT PARKLT 8 CON 1 FTB TWP OF YORK AS IN OS15022; BEING ST. ENOCH'S SQUARE; CITY OF TORONTO	CITY OF TORONTO C/O CITY CLERK 100 QUEEN STREET WEST 13TH FLOOR, WEST TOWER, CITY HALL, TORONTO, ON M5H 2N2
	21098-0201(LT)	PT PARKLT 8 CON 1 FTB TWP OF YORK; PT LT 7 W/S VICTORIA ST PL 22A TORONTO AS IN EP62953 & EP69249; CITY OF TORONTO; TOGETHER WITH AN EASEMENT OVER PCL 8-30 SEC Y2; PT PARKLT 8 CON 1 FTB TWP OF YORK DESIGNATED AS PART 26 ON PLAN 66R27069 AS IN AT3631950; TOGETHER WITH AN EASEMENT OVER PCL 100 SEC M TORONTO; PT PARKLT 8 CON 1 FTB TWP OF YORK E/S YONGE ST DESIGNATED AS PARTS 14 AND 17 ON PLAN 66R27069 AS IN AT3631950; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS PARTS 34, 35, 37, 38, 40, 41, 52, 57, 58, 59, 60 AND 61, 66R27069 AS IN AT3632036; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS PARTS 20, 23, 35, 38 & 53 ON PLAN 66R27069 AS IN AT3631950; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS PARTS 34, 35, 37, 40, 41 & 52 ON PLAN 66R27069 AS IN AT3631950; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS PARTS 35, 38 & 57 ON PLAN 66R27069 AS IN AT3631950; TOGETHER WITH AN EASEMENT OVER PART OF	THE CORPORATION OF MASSEY HALL AND ROY THOMSON HALL 60 SIMCOE STREET TORONTO, ON M5J 2M5

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Municipal Address	PIN	Legal Description	Registered Owner and Address of Service
		PARK LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS PART 58 ON PLAN 66R27069 AS IN AT3631950; TOGETHER WITH AN EASEMENT OVER PART OF PARK LOT 8, CONCESSION 1 FROM THE BAY, DESIGNATED AS PARTS 35, 38, 57, 60 & 61 ON PLAN 66R27069 AS IN AT3631950	

## Statement 61:

Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) made on November 19, 2018, in Court File No. CV-18-608978-00CL, KSV Kofman Inc. (the "Receiver") was appointed receiver and manager of, among other things, all the assets, undertaking and property of 1033803 Ontario Inc. operating as Forma-Con Construction ("Lien Claimant"). KSV KOFMAN INC. makes this registration in its capacity as Receiver, and not in its personal or corporate capacity.

Noah Goldstein is the authorized signing officer of the Receiver.

KSV KOFMAN INC. in its capacity as Court-appointed receiver and manager, without security, of all of the assets, undertakings and properties of 1033803 ONTARIO INC., operating as Forma-Con Construction and Forma Finishing ("Forma-Con"), and 1087507 ONTARIO INC. (together with Forma-Con, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors

Plaintiff

v. MOD DEVELOPMENTS  
(197 YONGE) LIMITED  
PARTNERSHIP

Defendant

Court File No.

CV-19-016137-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**STATEMENT OF CLAIM**

Torys LLP  
Suite 3000  
79 Wellington St. W.  
Box 270, TD Centre  
Toronto, ON M5K 1N2  
Fax: 416.865.7380

David Outerbridge (LSUC #: 42724V)  
Tel: 416.865.7825

Lawyer for the Plaintiff

This is Exhibit "5" referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



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A commissioner for taking Affidavits

AMENDED THIS 18-NOV-20 PURSUANT TO  
 MODIFIÉ \_\_\_\_\_ CONFORMÉMENT À \_\_\_\_\_

RULE/LA RÈGLE 26.02 (  B )

THE ORDER OF \_\_\_\_\_  
 L'ORDONNANCE DU \_\_\_\_\_  
 DATED/FAIT LE \_\_\_\_\_

Court File No.: CV-19-00616137-0000

Sen-Hsing D Lee Digitally signed by Sen-Hsing D Lee  
 DN: cn=Sen-Hsing D Lee, o=Government of Ontario, ou=People,  
 serialNumber=D2A9A92647, email=Sen-Hsing.D.Lee  
 Date: 2020.11.18 15:13:14 -0500 **ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

REGISTRAR **IN THE MATTER OF THE CONSTRUCTION ACT, R.S.O. 1990, C. c. 30**  
 SUPERIOR COURT OF JUSTICE **COUR SUPÉRIEURE DE JUSTICE**

**B E T W E E N :**

KSV KOFMAN INC. in its capacity as Court-appointed receiver and manager,  
 without security, of all of the assets, undertakings and properties of 1033803  
 ONTARIO INC., operating as Forma-Con Construction and Forma Finishing  
 ("Forma-Con"), and 1087507 ONTARIO INC. (together with Forma-Con, the  
 "Debtors") acquired for, or used in relation to a business carried on by the  
 Debtors

Plaintiff

- and -

MOD DEVELOPMENTS (197 YONGE) LIMITED PARTNERSHIP

Defendant

**AMENDED STATEMENT OF DEFENCE AND COUNTERCLAIM**

1. The Defendant, MOD Developments (197 Yonge) Limited Partnership, admits the allegations contained in paragraphs 2, 3 and 4 of the Statement of Claim.
2. The Defendant denies the remaining allegations in the Statement of Claim except to the extent that they are admitted in this Statement of Defence.
3. The Defendant engaged Forma-Con Construction (A DIVISION OF 1428502 ONTARIO LIMITED) ("Forma-Con") by contract dated December 19, 2014 ("Contract") for Forma-Con to provide concrete forming and falsework, void forming, concrete placing and finishing, temporary shoring, hoisting, coordination management of rebar placement, and the supply and insulation of concrete accessories ("Work") for the contract price including applicable taxes in the amount of \$23,084,770.00. The Defendant never entered into a contract with the Plaintiff for the Work. However, the Defendant did enter into a written agreement on December 27, 2018 ("Close Out Agreement") with the Plaintiff to complete some of the Work that was not completed by Forma-Con. The appointment of the receiver KSV Kofman Inc. ("KSV") occurred on November 19, 2018 by Court Order. For the purposes of this pleading and in order to maintain clarity, Forma-Con and the Plaintiff are different and distinct entities.

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4. The Defendant states that it has been determined that 1428502 Ontario Limited was never an incorporated entity and was not subject to the Court Order referred to in paragraph 3 herein.

5. Forma-Con and the Plaintiff supplied labour and materials to the project up to the date of March 25, 2019.

6. The Defendant states that it has made payment in full to Forma-Con and the Plaintiff for any and all labour and materials supplied to the project pursuant to the Contract and the Close Out Agreement, save and except for holdback funds and amounts for which the Defendant claims a setoff against both the Plaintiff and Forma-Con, which is the total amount of \$5,095,752.00, and the details of which are as set out in the Counterclaim herein.

7. The Defendant states that it has paid the Plaintiff in full with respect to all amounts properly owing pursuant to the Contract and the Close Out Agreement and that the Plaintiff has not sustained any losses or damage in respect of which the Defendant is required or obligated to make further payment. The Plaintiff is liable for any and all breaches of contract and damages suffered by the Defendant due to Forma-Con's breaches of contract as particularized herein.

8. The Plaintiff was at no time entitled to register a construction lien against the Property.

9. In the event that this Honourable Court finds the Plaintiff was ever entitled to a lien against the Property, which is not admitted but denied, the Defendant pleads that any lien rights in this respect expired prior to the registration of the lien by the Plaintiff and, furthermore, that the Plaintiff has failed to perfect its lien in a timely manner.

10. The Defendant denies that the Plaintiff is entitled to compensation on the basis of unjust enrichment or *quantum meruit*. The Plaintiff's right to be compensated for materials and services provided to the project, if any, is governed solely by the terms of the Contract and the Close Out Agreement.

11. The Defendant asks that the Plaintiff's lien be discharged and that this action be dismissed with costs assessed against the Plaintiff on a substantial indemnity basis.

### COUNTERCLAIM

12. The Defendant/Plaintiff by Counterclaim counterclaims against the Plaintiff/Defendant by Counterclaim the following:

- (a) Damages in the amount of ~~\$5,788,940.00~~ \$7,227,788.30, plus applicable HST, for negligence and breach of contract;
- (b) Prejudgment and postjudgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. 43;
- (c) Costs of this action and this Counterclaim on a substantial indemnity basis; and
- (d) Such further and other relief as this Honourable Court deems just.

13. The Defendant/Plaintiff by Counterclaim repeats and relies upon the allegations set out in the Statement of Defence.

14. The Defendant/Plaintiff by Counterclaim states it was an express and/or implied term of the Contract between the Defendant and Forma-Con that Forma-Con would supply labour and materials and perform work in a timely manner and in a good and workmanlike manner conforming with industry standards. The Defendant/Plaintiff by Counterclaim states that the Plaintiff/Defendant by Counterclaim is bound to the terms of Contract and the aforesaid express and/or implied term. The Defendant/Plaintiff by Counterclaim states that the Plaintiff/Defendant by Counterclaim is liable from any and all breaches and damages caused to the Defendant/Plaintiff by Counterclaim by Forma-Con.

15. The Defendant/Plaintiff by Counterclaim states that the Plaintiff/Defendant by Counterclaim and Forma-Con caused damages to the Defendant/Plaintiff by Counterclaim in the amount of ~~\$779,988.00~~ \$1,052,514.40 due to project delays in the amount of 103 days; as a result of the aforesaid delays by the Plaintiff/Defendant by Counterclaim and Forma-Con there were additional construction management fees incurred by the Defendant due to the Plaintiff/Defendant by Counterclaim's and Forma-Con's delays of 103 days which additional management fees amounted to \$220,000.00. As a result of the delay in the construction by the Plaintiff/Defendant by Counterclaim and Forma-Con by 103 days, the Defendant/Plaintiff by Counterclaim had to incur the damages of additional interest on its construction loan in the amount of ~~\$1,836,520.00~~ \$2,312,297.47.

16. The Defendant/Plaintiff by Counterclaim states that it also suffered additional damages arising as charges for crane downtime in the month of November 2018 as a result of the Plaintiff/Defendant by Counterclaim's and Forma-Con's failure to perform in accordance with the schedule of construction, which charged back costs amount to ~~\$747,702.00~~ \$988,031.54.

17. The Defendant/Plaintiff by Counterclaim states that as a result of the delays caused to the construction schedule for the project by the Plaintiff/Defendant by Counterclaim and Forma-Con, in breach of the contract, legal fees and lien bond premiums were incurred by the Defendant in the amount of ~~\$75,000.00~~ \$167,646.67 along with the cost of an allowance to complete the remaining contract in the amount of ~~\$700,000.00~~ \$1,057,298.22.

18. The Defendant/Plaintiff by Counterclaim states that it requires an allowance for warranty work to be completed by the Plaintiff/Defendant by Counterclaim and Forma-Con and claims a charge against the Plaintiff/Defendant by Counterclaim and Forma-Con in the amount of \$500,000.00.

19. The Defendant/Plaintiff by Counterclaim requires an allowance for Tarion delayed closing costs paid as compensation for condominium unit purchasers due to delay of closing dates with the said unit purchasers which delays were caused by the Plaintiff/Defendant by Counterclaim and Forma-Con and the Defendant/Plaintiff by Counterclaim claims a charge against the Plaintiff/Defendant by Counterclaim and Forma-Con for these delay costs in the amount of \$930,000.00.

20. As a result of the damages caused by the Plaintiff/Defendant by Counterclaim and Forma-Con, as particularized herein, the Defendant/Plaintiff by Counterclaim has sustained a loss of damage including, but not limited, the particulars set out herein which amount to ~~\$5,788,940.00~~ \$7,227,788.30 plus HST.

21. The Defendant/Plaintiff by Counterclaim requests that this Counterclaim be heard at the same time or immediately following the main action.



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July 15, 2019

**MILLER THOMSON LLP**  
Vaughan Metropolitan Centre  
100 New Park Place, Suite 700  
Vaughan, ON L4K 0H9

Michael P. Farace LSO#: 29852S  
mfarace@millerthomson.com  
Tel: 905.532.6618  
Fax: 416.595.8695

Lawyers for the Defendant/Plaintiff by Counterclaim

TO: **TORYS LLP**  
Suite 3000  
79 Wellington St. W.  
Box 270, TD Centre  
Toronto, ON M5K 1N2

David Outerbridge LSO#: 42724V  
Tel: 416.865.7825  
Fax: 416.865.7380

Lawyers for the Plaintiff/Defendant by Counterclaim

KSV KOFMAN INC. in its capacity as Court-appointed receiver and manager, without security, of all of the assets, undertakings and properties of 1033803 ONTARIO INC., operating as Forma-Con Construction and Forma Finishing ("Forma-Con"), and 1087507 ONTARIO INC. (together with Forma-Con, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors

Plaintiff/Defendant by Counterclaim

and MOD DEVELOPMENTS (197 YONGE)  
LIMITED PARTNERSHIP

Defendant/Plaintiff by Counterclaim

Court File No.: CV-19-00616137-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**AMENDED STATEMENT OF DEFENCE AND  
COUNTERCLAIM**

**MILLER THOMSON LLP**

Vaughan Metropolitan Centre  
100 New Park Place, Suite 700  
Vaughan, ON L4K 0H9

Michael P. Farace LSO#: 29852S  
mfarace@millerthomson.com  
Tel: 905.532.6618  
Fax: 416.595.8695

Lawyers for the Defendant/  
Plaintiff by Counterclaim

This is Exhibit <sup>..</sup>6<sup>..</sup> referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



A commissioner for taking Affidavits

Court File No. CV-19-00616137-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF THE *CONSTRUCTION ACT*, R.S.O. 1990, C. c-30

**B E T W E E N:**

KSV KOFMAN INC. in its capacity as Court-appointed receiver and manager, without security, of all of the assets, undertakings and properties of 1033803 ONTARIO INC., operating as Forma-Con Construction and Forma Finishing (“Forma-Con”), and 1087507 ONTARIO INC. (together with Forma-Con, the “Debtors”) acquired for, or used in relation to a business carried on by the Debtors

Plaintiff/Defendant by Counterclaim

- and -

MOD DEVELOPMENTS (197 YONGE) LIMITED PARTNERSHIP

Defendant/Plaintiff by Counterclaim

**REPLY AND DEFENCE TO COUNTERCLAIM**

**Reply**

1. In response to paragraph 3 of the Statement of Defence, the Plaintiff denies that Forma-Con and the Plaintiff are different and distinct corporate entities. The parties agreed and understood that the entity mutually understood as Forma-Con would perform the work specified in the contract between Forma-Con/the Plaintiff and the Defendant dated December 19, 2014 (the “Contract”), and Forma-Con/the Plaintiff did perform that work. If Forma-Con/the Plaintiff was misnamed in the Contract, the misnaming was a clerical error. The correct corporate entity is named in the Style of Cause of this proceeding.

**Defence to Counterclaim**

2. Except as expressly admitted below, the Defendant by Counterclaim denies each and every allegation set out in the counterclaim.

- 2 -

3. The Defendant by Counterclaim repeats and relies upon the allegations set out in its Statement of Claim.
4. Forma-Con performed all its contractual obligations in a timely and good and workmanlike manner in accordance with its contractual obligations and industry standards.
5. Forma-Con did not cause any project delays. Any delays in the construction of the Project were caused by factors beyond Forma-Con's control, including the Plaintiff by Counterclaim's own mismanagement of the Project, weather, and delays in the work of other subcontractors.
6. The Defendant by Counterclaim denies that there was any crane downtime at the Project in the month of November 2018. If there was any crane downtime, it was due to factors beyond Forma-Con's control, including the Plaintiff by Counterclaim's own mismanagement of the Project, weather, and delays in the work of other subcontractors.
7. The amount of an allowance claimed by the Plaintiff by Counterclaim to complete the remaining work under Forma-Con's contract is unsubstantiated and excessive.
8. There is no entitlement to take an allowance for hypothetical future warranty work. In any event, the amount of warranty holdback claimed by the Plaintiff by Counterclaim is unsubstantiated and excessive.
9. Any Tarion delayed closing costs incurred or to be incurred by the Plaintiff by Counterclaim are due to factors beyond Forma-Con's control, including the Plaintiff by Counterclaim's own mismanagement of the Project, weather, and delays in the work of other subcontractors. There is no entitlement to take an allowance for such delayed closing costs.
10. The Defendant by Counterclaim asks that the counterclaim be dismissed with costs.

- 3 -

October 5, 2020

**Torys LLP**

79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, ON M5K 1N2  
Fax: 416.865.7380

David Outerbridge (LSO: 42724V)  
[douterbridge@torys.com](mailto:douterbridge@torys.com)  
Tel: 416.865.7825

Shalom Cumbo-Steinmetz (LSO: 72181J)  
[scumbo-steinmetz@torys.com](mailto:scumbo-steinmetz@torys.com)  
Tel: 416.865.7529

Lawyers for the Plaintiff/Defendant by Counterclaim

TO: Miller Thomson LLP  
Vaughan Metropolitan Centre  
100 New Park Place, Suite 700  
Vaughan, ON L4K 0H9

Michael Farace (LSO: 29852S)  
[mfarace@millerthomson.com](mailto:mfarace@millerthomson.com)  
Tel: 905.532.6618  
Fax: 416.595.8695

Lawyers for the Defendant/Plaintiff by Counterclaim

KSV KOFMAN INC. in its capacity as Court-appointed receiver and manager, without security, of all of the assets, undertakings and properties of 1033803 ONTARIO INC., operating as Forma-Con Construction and Forma Finishing ("Forma-Con"), and 1087507 ONTARIO INC. (together with Forma-Con, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors

v.

MOD DEVELOPMENTS (197 YONGE) LIMITED  
PARTNERSHIP

Plaintiff

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the Construction Act, R.S.O. 1990, c. C.30

Proceeding commenced at TORONTO

**REPLY AND DEFENCE TO COUNTERCLAIM**

**Torys LLP**

79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, ON M5K 1N2  
Fax: 416.865.7380

David Outerbridge (LSO: 42724V)

[douterbridge@torys.com](mailto:douterbridge@torys.com)

Tel: 416.865.7825

Shalom Cumbo-Steinmetz (LSO: 72181J)

[scumbo-steinmetz@torys.com](mailto:scumbo-steinmetz@torys.com)

Tel: 416.865.7529

Lawyers for the Plaintiff

This is Exhibit <sup>"</sup>7<sup>"</sup> referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



A commissioner for taking Affidavits



## CLOSE OUT AGREEMENT

This Close Out Agreement (the “**Agreement**”) is made as of this 27<sup>th</sup> day of December, 2018 (the “**Effective Date**”) between:

**KSV KOFMAN INC.**, in its capacity as receiver and manager of: (i) all of the assets, undertakings and properties of 1033803 Ontario Inc. (operating as Forma-Con Construction and Forma Finishing) and 1087507 Ontario Limited; (ii) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.; and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario, and not in its personal or corporate capacity

(the “**Receiver**”)

- and -

### **MOD DEVELOPMENTS (197 YONGE) LIMITED PARTNERSHIP**

(the “**Owner**”)

(The Receiver and the Owner are individually referred to herein as a “**Party**” and collectively as the “**Parties**”).

### RECITALS

1. Forma-Con Construction (a division of 1428502 Ontario Limited) (the “**Trade Contractor**”) and the Owner entered into the Agreement for Construction Management Projects dated December 19, 2014 (the “**Construction Contract**”) in respect of Massey Tower located at 197 Yonge Street, Toronto, Ontario (the “**Project**”). Pursuant to the Construction Contract, the Trade Contractor is to provide concrete forming and falsework, void forming, concrete placing and finishing, temporary shoring, hoisting, coordination management of the rebar placing contractor, and supply and installation of concrete accessories in respect of the Project (the “**Work**”).
2. Schedule A sets out certain services required in connection with the portion of the Work which has not been performed as of the date of this Agreement, as may be amended from time-to-time upon the mutual agreement of the Parties and documented in an addendum to this Agreement (the “**Services**”).
3. In respect of payments pursuant to the Construction Contract as of the Effective Date, the Owner has, in accordance with the *Construction Act* R.S.O. 1990, c. C30 (the “**Construction Act**”), held back \$2,038,704.26 (which is net of taxes) of the Contract Price which is subject to the terms and conditions of the Construction Contract and the Construction Act (the “**Holdback**”).
4. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) made on November 19, 2018 (the “**Receivership Order**”), the Receiver was appointed receiver and manager of: (a) all of the assets, undertakings and properties of 1033803 Ontario Inc. (operating as Forma-Con Construction and Forma Finishing) (the “**Service Provider**”) and 1087507 Ontario Limited; (b) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd.; and (c) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario ((a) – (c), collectively, the “**Property**”).

5. Subject to Recital 3 above, the Holdback is Property (as such term is defined in the Receivership Order) over which the Receiver has been appointed receiver and manager pursuant to the Receivership Order.
6. The Parties have agreed on terms for payment for the Services to be performed by the Service Provider for the Owner and agree to work cooperatively to confirm amounts remaining to be billed under the Construction Contract and the amount owing by the Owner to the Trade Contractor pursuant to the Construction Contract.
7. The Owner wishes to have the Service Provider provide the Services on a time and materials basis and the Receiver agrees to use commercially reasonable efforts to cause the Service Provider to provide such Services in accordance with this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that, for the consideration described in the recitals above and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, the Parties hereby covenant and agree as follows:

#### **1.1 Defined Terms**

Capitalized terms shall have the meaning ascribed in this Agreement. Capitalized terms used herein which are not otherwise defined herein shall have their respective meanings as set forth in the Construction Contract.

#### **1.2 The Services**

- (1) The Receiver shall use commercially reasonable efforts to cause the Service Provider to provide the Services on a time and material basis in accordance with the rates set out in Schedule B.
- (2) The Owner shall prepay for each 15 working day period of Services to be performed by the Service Provider (each, a “**Services Period**”). The estimate for the first Services Period is attached hereto as Schedule C and shall be paid by the Owner to the Receiver forthwith upon execution of this Agreement prior to the Service Provider commencing Services in accordance with this Agreement, by the Owner wiring the funds to the Receiver at the following bank account:

Bank of Montreal  
 1 First Canadian Place  
 100 King Street West  
 Toronto, ON M5X 1A3

CAD\$ Account:

Bank Transit (ABA) Number: 00022  
 Bank Account Number : 00022-1754-637  
 Bank Swift Code: BOFMCAM2  
 Name of Account: KSV Kofman Inc., Receiver of 1033803 Ontario Inc. & 1087507 Ontario Inc.

- (3) The Receiver shall deliver an estimate for each subsequent Services Period no later than five (5) Business Days prior to the start of such Services Period. The Owner must pay the Receiver the amount set out in such estimate, as such shall be adjusted to reflect the actual cost of Services performed in accordance with this Agreement incurred in prior Services Periods (as a credit or debit), prior to the Service Provider performing Services during such Services Period. If such reconciliation has not been prepared by the Receiver within the timeframe reflected in this Section 1.2(3), the Receiver shall promptly prepare the reconciliation and thereafter, a payment will be made by the Owner to the Receiver if the pre-payment made by the Owner was less than the value of the Services performed in accordance with this Agreement and by the Receiver to the Owner if the pre-payment made by the Owner was greater than the value of the Services performed in accordance with this Agreement. Within 10 days of the completion of the Services, a final reconciliation will be prepared by the Receiver and a final payment will be made by the Owner to the Receiver if the pre-payments made by the Owner, in aggregate, were less than the value of the Services performed in accordance with this Agreement and by the Receiver to the Owner if the pre-payments made by the Owner, in aggregate, were greater than the value of the Services performed in accordance with this Agreement. Where a holdback is required by the Construction Act in connection with payments made pursuant to this Agreement, the Owner shall retain and release such holdback in accordance with the Construction Act.
- (4) For clarity, any additional Services agreed to by the Parties shall also be prepaid by Owner to the Receiver, on behalf of the Service Provider, on a time and materials basis.

### 1.3 Crane Removal

The Parties agree that: (a) the Receiver shall use commercially reasonable efforts to retain Gabrielli Crane Erectors Inc. (“**Gabrielli**”) to remove the crane located on the Project (“**Crane Removal**”); and (b) the Owner shall pay Gabrielli for the Crane Removal.

### 1.4 Payments

- (1) The Parties agree that: (a) the value of the Services performed in accordance with this Agreement; and (b) the amount paid to Gabrielli, shall be set-off by Owner against the Holdback.
- (2) The Parties agree that the Owner shall have the right to pay or bond off any construction liens on the Project incurred in respect of the Work that has been validated by the Receiver in writing. The cost of paying or bonding off such validated construction liens shall be set-off by the Owner against the Holdback. The Owner will promptly notify the Receiver of any notice(s) of claim(s) for lien(s) or construction lien(s) (hereinafter collectively referred to as “Lien(s)”) that come(s) to its attention and the Receiver shall promptly confirm in writing that any such Lien(s) are valid or invalid. If the Receiver takes the position that any Lien(s) is/are invalid and the Owner does not agree, the execution of this Agreement in no way affects the Owner’s rights to contest any such Lien(s) and to deal with the vacating, litigating or settling any such Lien(s) as the Owner deems appropriate and the Owner is entitled to claim a set-off for such Lien(s) and the Receiver has the right to contest any such set-off rights claimed by the Owner.

## **1.5 Capacity**

The Owner acknowledges and agrees that: (a) the Receiver is entering into this Agreement solely in its capacity as Court-appointed receiver and manager of the Property, and not in its personal or corporate capacity; (b) the Receiver shall have no liability in its personal or corporate capacity for any matter related to performance of the Services, Crane Removal, completion of the Project generally, nor for any claim that exists or may arise in respect of the completion of outstanding Work pursuant to the Construction Contract; and (c) all claims described in subparagraph (b), above, shall be claim against the Trade Contractor, the Service Provider or Gabrielli, as the case may be.

## **1.6 Without Prejudice**

Notwithstanding the Parties agreement on the terms for performance of the Services pursuant to this Agreement, the Parties acknowledge and agree that:

- (a) entering into this Agreement is without prejudice to the Parties' rights as it relates to disputes regarding the identity of the counterparty to the Owner under the Construction Contract (1428502 Ontario Limited versus 1033803 Ontario Inc.);
- (b) the Owner has identified additional items with respect to which it asserts set-off rights pertaining to the Construction Contract and the Project and the Receiver has not had the opportunity to review and assess such additional items and whether there are valid set-off rights related thereto;
- (c) the Parties shall cooperate and work together to determine whether the Owner has valid set-off rights claims and, if applicable, the quantum of such claims. The Owner shall provide the Receiver with all documentation that the Receiver requires in order to complete its assessment of such claims. The Receiver shall provide the Owner with all documentation that the Owner requires in order to complete its assessment of the amounts owing to the Trade Contractor from the Owner in respect of the Project for the periods prior to and during the receivership; and
- (d) the execution of this Agreement in no way affects the Receiver's rights to contest any set-off rights claimed by the Owner.

## **1.7 Assignment and Enurement**

This Agreement shall enure to the benefit of and bind the Parties and their respective successors. This Agreement shall not be assignable by either Party.

## **1.8 Entire Agreement**

This Agreement contains the entire agreement between the Parties relating to the matters set out herein and supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, relating to the matters set out herein.

## **1.9 Governing Law**

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario.

**1.10 Dispute Resolution**

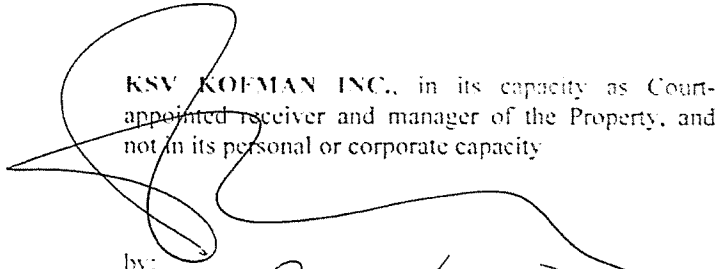
The Parties hereby submit to the exclusive jurisdiction of the Ontario Superior Court of Justice (Commercial List) to resolve any dispute with respect to or arising from this Agreement.

**1.11 Counterparts**

This Agreement may be signed, including by facsimile signature, in two or more counterparts and each such counterpart will constitute an original document and such counterparts, taken together, will constitute the same instrument.

*[Remainder of this page left intentionally blank.]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written.

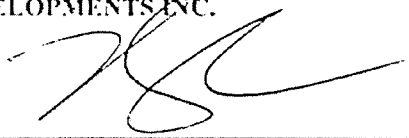


KSV KOFMAN INC. in its capacity as Court-appointed receiver and manager of the Property, and not in its personal or corporate capacity

by: \_\_\_\_\_  
Name: ROBERT KOFMAN  
Title: PRESIDENT

by: \_\_\_\_\_  
Name:  
Title:

MOD DEVELOPMENTS (197 YONGE) LIMITED PARTNERSHIP, by its general partner, MOD DEVELOPMENTS INC.



by: \_\_\_\_\_  
Name: NOORIZ LALANI  
Title: A.S.D.

by: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE A

### SCOPE OF WORK

Commencing on December 27, 2018 or as soon reasonably practicable thereafter given that personnel availability may be limited during the 2018 holiday season, the Receiver shall use commercially reasonable efforts to cause the Service Provider to provide the following personnel and equipment for 15 working days, or such longer period as the Parties may agree to in writing:

1. Crane Rental;
2. Crane Operator; and
3. Crane Swamper.

In accordance with Recital 2 in this Agreement, the Parties agree that the Owner has provided a schedule with respect to additional work to be performed in respect of the Project and that they shall enter into negotiations regarding the terms of an amendment to this Agreement. For greater certainty and notwithstanding any other provision in this Agreement, it is acknowledged and agreed by the Parties that this Agreement currently only contemplates one 15 working day period.

**SCHEDULE B****RATES**

Crane Operator:	\$135/hr
Swamper:	\$90/hr
Crane Rental:	\$3,500/week



**SCHEDULE C****ESTIMATE FOR THE FIRST CONSTRUCTION PERIOD**

Period Start: December 27<sup>th</sup>, 2018.

Period End: January 12<sup>th</sup>, 2019 (excludes December 31, 2018 and January 1, 2019).

Construction Period Costs: \$37,500, which is broken down as follows:

(a) Crane Operator (\$135/hr x 8hr x 15 days)	= \$16,200.00
(b) Swamper (\$90/hr x 8hr x 15 days)	= \$10,800.00
(c) Crane Rental (\$3,500/week x 3 weeks)	= \$10,500.00

This is Exhibit <sup>"8"</sup> referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



---

A commissioner for taking Affidavits



Ministry of Government and  
 Consumer Services  
 Ministère des Services gouvernementaux et  
 des Services aux consommateurs

## Certificate of No Match

## Attestation de non- correspondance

A search was conducted for / Une recherche a été effectuée pour

1428502 Ontario Limited

This is to certify that according to the electronic records maintained by the Ministry of Government and Consumer Services, a record could not be found for the above name or number under the following acts administered by the Ministry of Government and Consumer Services:

Business Corporations Act  
 Business Names Act  
 Co-operative Corporations Act  
 Corporations Act  
 Corporations Information Act  
 Extra-Provincial Corporations Act  
 Limited Partnerships Act  
 Not-for-Profit Corporations Act, 2010

La présente vise à attester qu'aucun enregistrement en vertu des lois suivantes appliquées par le ministère des Services gouvernementaux et des Services aux consommateurs n'a été trouvé dans les dossiers électroniques du ministère pour le nom ou le numéro précisé :

Loi sur les sociétés par actions  
 Loi sur les noms commerciaux  
 Loi sur les sociétés coopératives  
 Lois sur les personnes morales  
 Loi sur les renseignements exigés des personnes morales  
 Loi sur les personnes morales extraprovinciales  
 Loi sur les sociétés en commandite  
 Loi de 2010 sur les organisations sans but lucratif

*Barbara Duckitt*

Director or Registrar / Directeur ou registrateur

Certified a true copy of the record of the  
 Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

Copie certifiée conforme du dossier du  
 ministère des Services gouvernementaux et des Services aux  
 consommateurs.

*Barbara Duckitt*

Directeur ou registrateur

This is Exhibit '9' referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



---

A commissioner for taking Affidavits

Ministry of Government and  
Consumer Services

## Profile Report

SECOND FLOOR LTD. as of February 22, 2022

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	SECOND FLOOR LTD.
Ontario Corporation Number (OCN)	1428502
Governing Jurisdiction	Canada - Ontario
Status	Inactive - Cancelled by C.T.
Date of Incorporation	July 06, 2000
Inactive Date	February 19, 2007
Registered or Head Office Address	3730 Kingston Road, Toronto, Ontario, Canada, M1J 3H3

Certified a true copy of the record of the Ministry of Government and Consumer Services.

A handwritten signature in cursive script that reads "Barbara Duckitt".

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Transaction Number: APP-166714030078  
Report Generated on February 22, 2022, 15:11

Active Director(s)  
Minimum Number of Directors  
Maximum Number of Directors

1  
3

Name  
Address for Service  
Resident Canadian  
Date Began

Nora CLEARY  
2865 Kingston Road, Toronto, Ontario, Canada, M1M 1N3  
Yes  
July 06, 2000

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

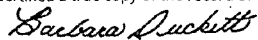
Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

**Active Officer(s)**

There are no active Officers currently on file for this corporation.

Certified a true copy of the record of the Ministry of Government and Consumer Services.



Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Transaction Number: APP-166714030078  
Report Generated on February 22, 2022, 15:11

Corporate Name History

Name

SECOND FLOOR LTD.

Effective Date

July 06, 2000

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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Transaction Number: APP-166714030078  
Report Generated on February 22, 2022, 15:11

#### Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Transaction Number: APP-166714030078  
Report Generated on February 22, 2022, 15:11

### Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

## Document List

Filing Name	Effective Date
BCA - Cancelled Request CT 241(4)	March 04, 2007
CTA - Default Corporations Tax Act	October 28, 2006
BCA - Articles of Incorporation	July 06, 2000

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

This is Exhibit "10" referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



A commissioner for taking Affidavits



# FORMA-CON CONSTRUCTION

(A DIVISION OF 1428508 ONTARIO LIMITED)

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013

TUCKER  
 HI-RISE CONSTRUCTION INC  
 NOV 02 2015  
 RECEIVED

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3ZA

Project: 15300  
 MASSEY TOWER

Date: Oct 31/15

Appl #: 1

Total

1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
	=====	
5. Total Progress	\$1,275,000.00	
6. Holdback	\$127,500.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$127,500.00	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$1,147,500.00	\$1,147,500.00
	-----	
10. Less line 9 from previous application	\$0.00	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$1,147,500.00	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$19,281,500.00
		=====
13. GST/HST BN # 863740692	\$149,175.00	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$1,296,675.00	
	=====	

TUCKER HIRISE  
 CONSTRUCTION INC.

COST CODE	PROJECT
03100	19245
ACCTNG	
PROJ. MGR.	
DATE	

**Clearance Certificate / Certificat de décharge**

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mm-yyyy) / Période de validité (jj/mm/aaaa)
1428508 ONTARIO LIMITED / FORMACON CONSTRUCTION	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4222-001: Form Work (High-Rise) 4222-002: Form Work (Low-Rise)	MOD Developments (197 Yonge) LP / Massey Tower	8 Price Street, Toronto, ON, M4W 3Z4, CAN	E2000007S74U	29-Oct-2015 to 19-Nov-2015

CERTIFICATE OF INSURANCE - 15-16-037

THIS IS TO CERTIFY TO: MOD Developments (197 Yonge) Limited Partnership

8 Price Street, 4th Floor  
Toronto, Ontario  
M4W 1Z4

that Policy(ies) of Insurance as herein described have been issued to the Insured named this date.

NAMED INSURED: Forma Con Construction  
a Division of 1428508 Ontario Limited  
407 Basaltic Road,  
Concord, Ontario  
L4K 4W8

COVERAGE	INSURER & POLICY #	LIMIT	POLICY PERIOD
<b>COMMERCIAL GENERAL LIABILITY (OCCURRENCE FORM)</b> <i>(Applicable to Off Site Operations ONLY)</i> <i>(where Wrap-Up Liability is in effect for project noted herein)</i> Each Occurrence Limit: General Aggregate Limit: Products and Completed Operations Aggregate Limit: Non-Owned Automobile Liability: Including: - Personal Injury, - Blanket Contractual Liability, - Cross Liability / Severability of Interest Clause	Northbridge General Insurance Corporation Policy #: CBC 0626497	\$1,000,000 \$5,000,000 \$1,000,000 \$1,000,000	January 1, 2015 to January 1, 2016
<b>UMBRELLA LIABILITY</b> - In excess of Underlying Commercial General Liability Limit - Policy # CBC 0626497	Northbridge General Insurance Corporation Policy #: CBC 0626497	\$19,000,000 Per occurrence	January 1, 2015 to January 1, 2016
<b>THIRD PARTY AUTOMOBILE LIABILITY</b> - Owned Vehicles	Northbridge General Insurance Corporation Policy #: CBC0622946	\$1,000,000	January 1, 2015 to January 1, 2016
<b>UMBRELLA LIABILITY</b> - In excess of Third Party Automobile Liability Limits - Policy # CBC 0622946	Northbridge General Insurance Corporation Policy #: CBC0622946	\$29,000,000 Per occurrence	January 1, 2015 to January 1, 2016
<b>TOTAL LIMIT OF LIABILITY (COMMERCIAL GENERAL LIABILITY)</b>		<b>\$20,000,000</b>	Per Occurrence
<b>TOTAL LIMIT OF LIABILITY (THIRD PARTY AUTOMOBILE LIABILITY)</b>		<b>\$30,000,000</b>	Per Occurrence

**CONTRACTOR'S EQUIPMENT (Owned Schedule)** Northbridge General Insurance Corporation Equipment Owned and/or Long Term Leased by Named Insured  
 - All Risk, subject to policy Terms, Exclusions and Deductibles Policy #: CBC 0626497 January 1, 2015 to January 1, 2016

- WAIVER OF SUBROGATION ON CONTRACTORS EQUIPMENT COVERAGE to be provided in favour of the Certificate Holder(s), but only when the partial or sole negligence of the Certificate Holder(s) is not the proximate cause of the loss or damage.

COVERING: Work usual to the operations of the Named Insured with respect to: Massey Tower - 179 Yonge Street, Toronto, Ontario

NOTE: It is agreed that MOD Developments (197 Yonge) Limited Partnership, Tucker Hirise Construction Inc. is(are) added as Additional Insured(s) with respect to Commercial General Liability and Umbrella Liability and then only with respect to liability arising out of the operations of the Named Insured at the above noted project / location.

It is further agreed that MOD Developments (197 Yonge) Limited Partnership will be given 60 days prior written notice of cancellation with respect to Commercial General Liability and Umbrella Liability and 15 days with respect to Third Party Liability (Owned vehicles), except where Statutory Conditions apply.

This Certificate of Insurance does not in any way amend or alter the terms, conditions and exclusions of the policies mentioned above.

Dated at Concord, Ontario this: October 30, 2015

At the office of: MASTERS INSURANCE LIMITED  
7501 Keele Street, Suite # 400  
Concord, Ontario, L4K 1Y2  
Tel: # 905-738-4164, Fax # 905-738-5143

MASTERS INSURANCE LIMITED

PER   
Michelle Beauvais  
(Authorized Representative)



# FORMA-CON CONSTRUCTION

(A DIVISION OF 1428508 ONTARIO LIMITED)

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013

TUCKER  
 HI-RISE CONSTRUCTION INC.  
  
 NOV 20 2015  
  
 RECEIVED

**APPLICATION FOR PAYMENT**

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3ZA

Project: 15300  
 MASSEY TOWER

Date: Nov 20/15

Appl #: 2

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$1,570,000.00	
6. Holdback	\$157,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$157,000.00	
9. Total Progress Less Curr.Holdback (5-8)	\$1,413,000.00	\$1,413,000.00
10. Less line 9 from previous application	\$1,147,500.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$265,500.00	
12. Balance Unpaid Under Contract (4-9)		\$19,016,000.00
13. GST/HST BN # 863740692	\$34,515.00	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$300,015.00	

333,330.00

Company 060001 Project \_\_\_\_\_ Cost Code 0300.05 # 359  
 Posting Date 11/20/15 Group # 206445 Unit # 2  
 Entered by emj Approved By \_\_\_\_\_  
 Total Invoice \_\_\_\_\_ Taxes \_\_\_\_\_ Net Amount \_\_\_\_\_  
 Other Remarks \_\_\_\_\_

L20 - 90,000.  
 L40 - 220,000.

TUCKER HIRISE CONSTRUCTION INC.	
COST CODE	PROJECT
03100	19746
ACT ENG	<del>15</del>
PROJ MGR	<del>15</del>
OWNER	115

wsib ✓  
 site ✓  
 stat NA



**Clearance Certificate / Certificat de décharge**

<b>Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur</b>	<b>Contractor Address / Adresse de l'entrepreneur</b>	<b>Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description</b>	<b>Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal</b>	<b>Principal Address / Adresse de l'entrepreneur principal</b>	<b>Clearance Certificate Number / Numéro du certificat de décharge</b>	<b>Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)</b>
1428508 ONTARIO LIMITED / FORM- CON CONSTRUCTION	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD Developments (197 Yonge) LP / Massey Tower	8 Price Street, Toronto, ON, M4W 3Z4, CAN	E2000007URTA	20-Nov-2015 to 19-Feb-2016



# FORMA-CON CONSTRUCTION

(A DIVISION OF 1428508 ONTARIO LIMITED)

407 Basaltic Road  
Concord, Ontario  
L4K 4W8

Phone (905) 303-8010  
Fax (905) 303-8013

TUCKER  
HI-RISE CONSTRUCTION INC  
DEC 11 2015  
RECEIVED

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
c/o TUCKER HIRISE CONSTRUCTION  
3755 VICTORIA PARK AVENUE  
TORONTO, ONTARIO M1W 3Z4

Project: 15300  
MASSEY TOWER

Date: Dec 10/15

Appl #: 3

Total

1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$2,250,000.00	
6. Holdback	\$225,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$225,000.00	
9. Total Progress Less Curr.Holdback (5-8)	\$2,025,000.00	\$2,025,000.00
10. Less line 9 from previous application	\$1,413,000.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$612,000.00	
12. Balance Unpaid Under Contract (4-9)		\$18,404,000.00
13. GST/HST BN # 863740692	\$79,560.00	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$691,560.00	

Company 060001 Project \_\_\_\_\_ Cost Code 8020.01

Posting Date 12/2015 Group # 207069 Unit # 04

Entered by CM Approved By CM

Total Invoice \_\_\_\_\_ Taxes \_\_\_\_\_ Net Amount \_\_\_\_\_

Other Remarks \_\_\_\_\_

TUCKER HIRISE  
CONSTRUCTION INC

03100 19746

wsib ✓  
site ✓  
stat ✓

PO # 359  
L 40.  
768400.



# FORMA-CON CONSTRUCTION

(A DIVISION OF 1428508 ONTARIO LIMITED)

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013

TUCKER  
 HI-RISE CONSTRUCTION INC  
  
 DEC 11 2015  
  
 RECEIVED

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Dec 10/15

Appl #: 3 ✓

Total

1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$2,250,000.00	
6. Holdback	\$225,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$225,000.00	
9. Total Progress Less Curr.Holdback (5-8)	\$2,025,000.00	\$2,025,000.00
10. Less line 9 from previous application	\$1,413,000.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$612,000.00 ✓	
12. Balance Unpaid Under Contract (4-9)		\$18,404,000.00
13. GST/HST BN # 863740692	\$79,560.00	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$691,560.00 ✓	

TUCKER HIRISE CONSTRUCTION INC

Company <u>060001</u>	Project _____	Cost Code <u>03100</u>	
Posting Date <u>12/20/15</u>	Group # <u>207069</u>	Unit # <u>04</u>	<u>19776</u>
Entered by <u>CM</u>	Approved By <u>[Signature]</u>		
Total Invoice _____	Taxes _____	Net Amount _____	
Other Remarks _____			

wsib ✓  
 site ✓  
 stat ✓

PO # 359  
 L 40.

768400.



Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1428508 ONTARIO LIMITED / FORMA- CON CONSTRUCTION	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD Developments (197 Yonge) LP / Massey Tower	8 Price Street, Toronto, ON, M4W 3Z4, CAN	E2000007URTA	20-Nov-2015 to 19-Feb-2016



# FORMA-CON CONSTRUCTION

(A DIVISION OF 1428508 ONTARIO LIMITED)

407 Basaltic Road  
Concord, Ontario  
L4K 4W8

Phone (905) 303-8010  
Fax (905) 303-8013

### APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
c/o TUCKER HIRISE CONSTRUCTION  
3755 VICTORIA PARK AVENUE  
TORONTO, ONTARIO M1W 3Z4

Project: 15300  
MASSEY TOWER

Date: Jan 20/16

Appl #: 4

Total

1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$2,500,000.00	
6. Holdback	\$250,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$250,000.00	
9. Total Progress Less Curr.Holdback (5-8)	\$2,250,000.00	\$2,250,000.00
10. Less line 9 from previous application	\$2,025,000.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$225,000.00	
12. Balance Unpaid Under Contract (4-9)		\$18,179,000.00
13. GST/HST BN # 863740692	\$29,250.00	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$254,250.00	

TUCKER HIRISE CONSTRUCTION INC.  $- 282,500.00$

Company 060001 Project \_\_\_\_\_ Cost Code 03050-01 PO#359  
 Posting Date 1/20/16 Group # 27764 Unit # 1 line 40+50  
 Entered by EM Approved By \_\_\_\_\_  
 Total Invoice \_\_\_\_\_ Taxes \_\_\_\_\_ Net Amount \_\_\_\_\_  
 Other Remarks \_\_\_\_\_

COST TYPE	PROJECT
03000	14774
ACCTG	
PROJ.MGR	
OWNER	

wsib ✓  
site  
stat ✓

C 2002  
C 2003


**Clearance Certificate / Certificat de décharge**

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mm- yyyy) / Période de validité (jj/mm/aaaa)
1428508 ONTARIO LIMITED / FORMA- CON CONSTRUCTION	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD Developments (197 Yonge) LP / Massey Tower	8 Price Street, Toronto, ON, M4W 3Z4, CAN	E2000007URTA	20-Nov-2015 to 19-Feb-2016



# FORMA-CON CONSTRUCTION

(A DIVISION OF 1428508 ONTARIO LIMITED)

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013

TUCKER  
 HI-RISE CONSTRUCTION INC

FEB 23 2016

RECEIVED

**APPLICATION FOR PAYMENT**

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3ZA

**Project: 15300  
 MASSEY TOWER**

**Date: Feb 20/16**

**Appl #: 5**

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$3,450,000.00	
6. Holdback	\$345,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$345,000.00	
9. Total Progress Less Curr.Holdback (5-8)	\$3,105,000.00	\$3,105,000.00
10. Less line 9 from previous application	\$2,250,000.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$855,000.00	
12. Balance Unpaid Under Contract (4-9)		\$17,324,000.00
13. GST/HST BN # 863740692	\$111,150.00	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$966,150.00	

TUCKER HIRISE  
 CONSTRUCTION INC.

COST CODE	PROJECT
D 3100	19776
ACCTNG	<del>19776</del>
PROJ. MGR.	<i>[Signature]</i>
OWNER	<i>[Signature]</i>

*wsie ✓  
 site ✓  
 stat*

*LSO - 450,000  
 L60 - 100,000*

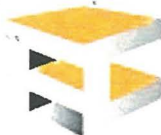
Company 060001 Project \_\_\_\_\_ Cost Code 03050.01  
 Posting Date 2/20/16 Group # 2085A8 Unit # 2  
 Entered by EM Approved By [Signature]  
 Total Invoice \_\_\_\_\_ Taxes \_\_\_\_\_ Net Amount \_\_\_\_\_  
 Other Remarks \_\_\_\_\_

*PO # 359*

**Clearance Certificate / Certificat de décharge**

<b>Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur</b>	<b>Contractor Address / Adresse de l'entrepreneur</b>	<b>Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description</b>	<b>Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal</b>	<b>Principal Address / Adresse de l'entrepreneur principal</b>	<b>Clearance Certificate Number / Numéro du certificat de décharge</b>	<b>Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)</b>
1428508 ONTARIO LIMITED / FORMA- CON CONSTRUCTION	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD Developments (197 Yonge) LP / Massey Tower	8 Price Street, Toronto, ON, M4W 3Z4, CAN	E2000008WOIK	22-Feb-2016 to 19-May-2016





# FORMA-CON CONSTRUCTION

(A DIVISION OF 1428508 ONTARIO LIMITED)

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013

TUCKER  
 HI-RISE CONSTRUCTION INC.  
  
 MAR 18 2016  
  
 RECEIVED

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3ZA

Project: 15300  
 MASSEY TOWER

Date: Mar 20/16

Appl #: 6

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$3,950,000.00	
6. Holdback	\$395,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$395,000.00	
9. Total Progress Less Curr.Holdback (5-8)	\$3,555,000.00	\$3,555,000.00
10. Less line 9 from previous application	\$3,105,000.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$450,000.00	
12. Balance Unpaid Under Contract (4-9)		\$16,874,000.00
13. GST/HST BN # 863740692	\$58,500.00	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$508,500.00	

TUCKER HIRISE  
CONSTRUCTION INC.

COST CODE	PROJECT
031cc.	19746
ACCTNG	
PROJ. MGR.	<i>[Signature]</i>
OWNER	

wsis  
site  
stat

— 165000 —

Company Cleco Project                      Cost Code 03050  
 Billing Date 3/20/16 Group # 29099 Unit # 7  
 Entered by EM Approved By DB  
 Total Invoice                      Taxes                      Net Amount 261  
 Other Remarks

## Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mm- yyyy) / Période de validité (jj/mm/aaaa)
1428508 ONTARIO LIMITED / FORMA- CON CONSTRUCTION	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD Developments (197 Yonge) LP / Massey Tower	8 Price Street, Toronto, ON, M4W 3Z4, CAN	E2000008WOIK	22-Feb-2016 to 19-May-2016

407 Basaltic Road  
Concord, Ontario  
L4K 4W8

Phone (905) 303-8010

Fax (905) 303-8013



# FORMA-CON CONSTRUCTION

( A DIVISION OF 1428508 ONTARIO LIMITED )

### APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
c/o TUCKER HIRISE CONSTRUCTION  
3755 VICTORIA PARK AVENUE  
TORONTO, ONTARIO M1W 3ZA

Project: 15300  
MASSEY TOWER

Date: Apr 12/16

Appl #: 7

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$4,350,000.00	
6. Holdback	\$435,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$435,000.00	
9. Total Progress Less Curr.Holdback (5-8)	\$3,915,000.00	\$3,915,000.00
10. Less line 9 from previous application	\$3,555,000.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$360,000.00	<del>400,000.00</del>
12. Balance Unpaid Under Contract (4-9)		\$16,514,000.00
13. GST/HST BN # 863740692	\$46,800.00	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$406,800.00	<u>452,000.00</u>

TUCKER HIRISE  
CONSTRUCTION INC

COST CODE	PROJECT
03100	19746
03050	01G
PROJ. MGR	
OWNER	

wsio -  
site -  
stat -

Company 06000 Project \_\_\_\_\_ Cost Code 03050  
Posting Date 4/20/16 Group # 209616 Unit # 2  
Entered by exg Approved By MH

Total Invoice \_\_\_\_\_ Taxes \_\_\_\_\_ Net Amount 707359  
Other Remarks \_\_\_\_\_ 260.





Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mm- yyyy) / Période de validité (jj/mm/aaaa)
1428508 ONTARIO LIMITED / FORMA- CON CONSTRUCTION	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD Developments (197 Yonge) LP / Massey Tower	8 Price Street, Toronto, ON, M4W 3Z4, CAN	E2000008WOIK	22-Feb-2016 to 19-May-2016



# FORMA-CON CONSTRUCTION

(A DIVISION OF 1428508 ONTARIO LIMITED)

### APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
c/o TUCKER HIRISE CONSTRUCTION  
3755 VICTORIA PARK AVENUE  
TORONTO, ONTARIO M1W 3Z4

Project: 15300  
MASSEY TOWER

Date: May 18/16

Appl #: 8

Total

1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$4,530,000.00	
6. Holdback	\$453,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$453,000.00	
9. Total Progress Less Curr.Holdback (5-8)	\$4,077,000.00	\$4,077,000.00
10. Less line 9 from previous application	\$3,915,000.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$162,000.00	← 180,000
12. Balance Unpaid Under Contract (4-9)		\$16,352,000.00
13. GST/HST BN # 863740692	\$21,060.00	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (E1+13)	\$183,060.00	23,400

FORMA-CON CONSTRUCTION INC.	
COST CODE	PROJECT
03100	19716
ACCTNG	
PROJ.MGR.	
OWNER	

Company 030001 Project \_\_\_\_\_ Cost Code 03050.e1  
 Posting Date 5/20/16 Group # 210525 Unit # 21 PO # 359  
 Entered by ETC Approved By [Signature] LFC  
 Total Invoice \_\_\_\_\_ Taxes \_\_\_\_\_ Net Amount \_\_\_\_\_  
 Other Remarks \_\_\_\_\_

**Clearance Certificate / Certificat de décharge**

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1428508 ONTARIO LIMITED / FORMA- CON CONSTRUCTION	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD Developments (197 Yonge) LP / Massey Tower	8 Price Street, Toronto, ON, M4W 3Z4, CAN	E2000009K25H	20-May-2016 to 19-Aug-2016



# FORMA-CON CONSTRUCTION

( A DIVISION OF 1428508 ONTARIO LIMITED )

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013

**TUCKER  
 HI-RISE CONSTRUCTION INC.**  
**JUN 20 2016**  
**RECEIVED**

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Jun 20/16

Appl #: 9

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$4,890,000.00	
6. Holdback	\$489,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$489,000.00	
9. Total Progress Less Curr.Holdback (5-8)	\$4,401,000.00	\$4,401,000.00
10. Less line 9 from previous application	\$4,077,000.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$324,000.00	
12. Balance Unpaid Under Contract (4-9)		\$16,028,000.00
13. GST/HST BN # 863740692	\$42,120.00	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$366,120.00	

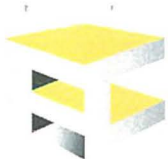
TUCKER HIRISE  
 APPLICATION NO.

03100	17746


**Clearance Certificate / Certificat de décharge**

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1428508 ONTARIO LIMITED / FORMA- CON CONSTRUCTION	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD Developments (197 Yonge) LP / Massey Tower	8 Price Street, Toronto, ON, M4W 3Z4, CAN	E2000009K25H	20-May-2016 to 19-Aug-2016





# FORMA-CON CONSTRUCTION

( A D I V I S I O N O F 1 4 2 8 5 0 8 O N T A R I O L I M I T E D )

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013

**TUCKER**  
 HI-RISE CONSTRUCTION INC.  
  
**JUL 20 2016**  
  
**RECEIVED**

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3ZA

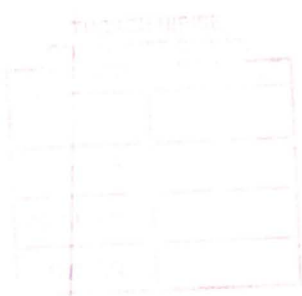
Project: 15300  
 MASSEY TOWER

Date: Jul 20/16

Appl #: 10

Total

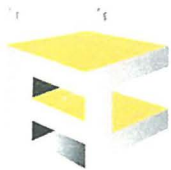
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
	=====	
5. Total Progress	\$5,310,000.00	
6. Holdback	\$531,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$531,000.00	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$4,779,000.00	\$4,779,000.00
	-----	
10. Less line 9 from previous application	\$4,401,000.00	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$378,000.00	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$15,650,000.00
		=====
13. GST/HST BN # 863740692	\$49,140.00	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$427,140.00	
	=====	





## Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mm- yyyy) / Période de validité (jj/mm/aaaa)
1428508 ONTARIO LIMITED / FORMA- CON CONSTRUCTION	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD Developments (197 Yonge) LP / Massey Tower	8 Price Street, Toronto, ON, M4W 3Z4, CAN	E2000009K25H	20-May-2016 to 19-Aug-2016



# FORMA-CON CONSTRUCTION

( A DIVISION OF 1428508 ONTARIO LIMITED )

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013

TUCKER  
 HI-RISE CONSTRUCTION INC.  
  
 AUG 19 2016  
  
 RECEIVED

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3ZA

Project: 15300  
 MASSEY TOWER

Date: Aug 20/16

Appl #: 11

*19746*

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$6,000,000.00	
6. Holdback	\$600,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$600,000.00	
9. Total Progress Less Curr.Holdback (5-8)	\$5,400,000.00	\$5,400,000.00
10. Less line 9 from previous application	\$4,779,000.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$621,000.00	
12. Balance Unpaid Under Contract (4-9)		\$15,029,000.00
13. GST/HST BN # 863740692	\$80,730.00	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$701,730.00	



Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1428508 ONTARIO LIMITED / FORMA- CON CONSTRUCTION	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD Developments (197 Yonge) LP / Massey Tower	8 Price Street, Toronto, ON, M4W 3Z4, CAN	E200000A8PKV	22-Aug-2016 to 19-Nov-2016



# FORMA-CON CONSTRUCTION

( A DIVISION OF 1428508 ONTARIO LIMITED )

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013

TUCKER  
 HI-RISE CONSTRUCTION INC.  
  
 OCT 20 2016  
  
 RECEIVED

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3ZA

Project: 15300  
 MASSEY TOWER

Date: Oct 20/16

Appl #: 13 ✓

Total

1. Original Contract Sum 2. Authorized Changes to Date 3. Unapproved Changes to Date  4. Contract Amount to Date  5. Total Progress 6. Holdback <span style="float: right;">\$762,000.00</span> 7. Holdback Released <span style="float: right;">\$0.00</span> 8. Current Holdback (6-7)  9. Total Progress Less Curr.Holdback (5-8)  10. Less line 9 from previous application  11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)  12. Balance Unpaid Under Contract (4-9)  13. GST/HST BN # 863740692  14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$20,429,000.00 \$0.00 \$0.00  ----- \$20,429,000.00 ===== \$7,620,000.00  \$762,000.00 ✓ ----- \$6,858,000.00 ✓  \$6,210,000.00 ----- \$648,000.00 ✓ =====  \$13,571,000.00 ===== \$84,240.00 ✓ ----- \$732,240.00 ✓ =====	\$20,429,000.00   \$20,429,000.00   \$6,858,000.00 ✓   \$13,571,000.00   \$732,240.00 ✓
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**TUCKER HIRISE  
 CONSTRUCTION INC.**

COST CODE	PROJECT
ACCTNG	
PROJ. MGR.	
OWNER	


**Clearance Certificate / Certificat de décharge**

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1428508 ONTARIO LIMITED / FORMA- CON CONSTRUCTION	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD Developments (197 Yonge) LP / Massey Tower	8 Price Street, Toronto, ON, M4W 3Z4, CAN	E200000A8PKV	22-Aug-2016 to 19-Nov-2016



# FORMA-CON CONSTRUCTION

( A DIVISION OF 1428508 ONTARIO LIMITED )

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013



APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3ZA

Project: 15300  
 MASSEY TOWER

Date: Nov 20/16

Appl #: 14

Total

1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$8,250,000.00	
6. Holdback	\$825,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$825,000.00	
9. Total Progress Less Curr.Holdback (5-8)	\$7,425,000.00	\$7,425,000.00
10. Less line 9 from previous application	\$6,858,000.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$567,000.00	
12. Balance Unpaid Under Contract (4-9)		\$13,004,000.00
13. GST/HST BN # 863740692	\$73,710.00	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$640,710.00	

TUCKER HIRISE  
 CONSTRUCTION INC.

COST CODE	PROJECT
ACCTNG	
PROJ. MGR.	
OWNER	




**Clearance Certificate / Certificat de décharge**

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mm- yyyy) / Période de validité (jj/mm/aaaa)
1428508 ONTARIO LIMITED / FORMA- CON CONSTRUCTION	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD Developments (197 Yonge) LP / Massey Tower	8 Price Street, Toronto, ON, M4W 3Z4, CAN	E200000A8PKV	22-Aug-2016 to 19-Nov-2016



**FORMA-CON CONSTRUCTION**  
 ( A DIVISION OF 1428508 ONTARIO LIMITED )

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3ZA

Project: 15300  
 MASSEY TOWER

Date: Dec 20/16

Appl #: 15

Total

1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
	=====	
5. Total Progress	\$8,745,000.00	
6. Holdback	\$874,500.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$874,500.00	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$7,870,500.00	\$7,870,500.00
	-----	
10. Less line 9 from previous application	\$7,425,000.00	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$445,500.00	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$12,558,500.00
		=====
13. GST/HST BN # 863740692	\$57,915.00	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$503,415.00	
	=====	

TUCKER HIRISE  
 CONSTRUCTION INC.

COST CODE	PROJECT
	197YG
ACCTNG	FW
PROJ. MGR.	[Signature]
OWNER	

Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1428508 ONTARIO LIMITED / FORMA- CON CONSTRUCTION	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD Developments (197 Yonge) LP / Massey Tower	8 Price Street, Toronto, ON, M4W 3Z4, CAN	E200000AZJEM	24-Nov-2016 to 19-Feb-2017

This is Exhibit <sup>" "</sup>// referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



A commissioner for taking Affidavits

Ministry of Government and  
Consumer Services

## Profile Report

1428508 ONTARIO LIMITED as of February 28, 2022

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	1428508 ONTARIO LIMITED
Ontario Corporation Number (OCN)	1428508
Governing Jurisdiction	Canada - Ontario
Status	Inactive - Voluntary Dissolution
Date of Incorporation	July 06, 2000
Inactive Date	June 21, 2016
Registered or Head Office Address	407 Basaltic Road, Concord, Ontario, Canada, L4K 4W8

Certified a true copy of the record of the Ministry of Government and Consumer Services.

A handwritten signature in cursive script that reads "Barbara Duckitt".

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Transaction Number: APP-119879835425  
Report Generated on February 28, 2022, 10:59

Active Director(s)  
Minimum Number of Directors  
Maximum Number of Directors

1  
20

Name  
Address for Service  
Resident Canadian  
Date Began

Michael SOLANO  
407 Basaltic Road, Concord, Ontario, Canada, L4K 4W8  
Yes  
July 06, 2000

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

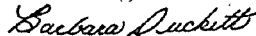
Transaction Number: APP-119879835425  
Report Generated on February 28, 2022, 10:59

**Active Officer(s)**

<b>Name</b>	Michael SOLANO
<b>Position</b>	Secretary
<b>Address for Service</b>	407 Basaltic Road, Concord, Ontario, Canada, L4K 4W8
<b>Date Began</b>	July 06, 2000

<b>Name</b>	Michael SOLANO
<b>Position</b>	President
<b>Address for Service</b>	407 Basaltic Road, Concord, Ontario, Canada, L4K 4W8
<b>Date Began</b>	July 06, 2000

Certified a true copy of the record of the Ministry of Government and Consumer Services.



Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Transaction Number: APP-119879835425  
Report Generated on February 28, 2022, 10:59

Corporate Name History

Name

1428508 ONTARIO LIMITED

Effective Date

July 06, 2000

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.



**Active Business Names**

This corporation does not have any active business names registered under the Business Names Act in Ontario.



Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Transaction Number: APP-119879835425  
Report Generated on February 28, 2022, 10:59

#### Expired or Cancelled Business Names

Name	FORMA-CON CONSTRUCTION
Business Identification Number (BIN)	100859297
Status	Inactive - Expired
Registration Date	August 01, 2000
Expired Date	July 31, 2005

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

## Document List

Filing Name	Effective Date
BCA - Articles of Dissolution	June 21, 2016
Annual Return - 2009 PAF: MICHAEL SOLANO - OFFICER	March 26, 2016
Annual Return - 2010 PAF: MICHAEL SOLANO - OFFICER	March 05, 2016
Annual Return - 2011 PAF: MICHAEL SOLANO - OFFICER	March 05, 2016
Annual Return - 2012 PAF: MICHAEL SOLANO - OFFICER	March 05, 2016
Annual Return - 2013 PAF: MICHAEL SOLANO - OFFICER	March 05, 2016
Annual Return - 2014 PAF: MICHAEL SOLANO - OFFICER	March 05, 2016
Annual Return - 2013 PAF: LINDA VELLA - OTHER	January 30, 2014
Annual Return - 2012 PAF: LINDA VELLA - OTHER	January 30, 2014
Annual Return - 2011 PAF: LINDA VELLA - OTHER	January 30, 2014
Annual Return - 2010 PAF: LINDA VELLA - OTHER	January 30, 2014
Annual Return - 2009 PAF: LINDA VELLA - OTHER	January 30, 2014
Annual Return - 2008 PAF: LINDA VELLA - OTHER	January 30, 2014

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Annual Return - 2007 PAF: MICHAEL SOLANO - DIRECTOR	July 19, 2008
Annual Return - 2006 PAF: MICHAEL SOLANO - DIRECTOR	July 28, 2007
Annual Return - 2005 PAF: MICHAEL SOLANO - DIRECTOR	July 15, 2006
Annual Return - 2004 PAF: MICHAEL SOLANO - DIRECTOR	August 13, 2005
Annual Return - 2003 PAF: MICHAEL SOLANO - DIRECTOR	July 31, 2004
Annual Return - 2002 PAF: MICHAEL SOLANO - DIRECTOR	July 20, 2003
Annual Return - 2001 PAF: MICHAEL SOLANO - DIRECTOR	July 21, 2002
Annual Return - 2000 PAF: STEVEN AQUINO	October 21, 2001
CIA - Notice of Change PAF: MICHAEL SOLANO - DIRECTOR	November 28, 2000
CIA - Initial Return PAF: HUGH LAURENCE - DIRECTOR	July 27, 2000
BCA - Articles of Incorporation	July 06, 2000

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

This is Exhibit <sup>"12"</sup>12 referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



A commissioner for taking Affidavits



**Tenth Report of  
KSV Restructuring Inc.  
as Receiver and Manager of  
1033803 Ontario Inc. and  
1087507 Ontario Limited and  
Certain Related Other Property**

**August 15, 2022**

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2.1 Documents Reviewed by the Receiver in Preparation of this Report.....	7
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## Appendices

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April Tucker Email.....	AA
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MOD 1033803 Insurance Certificate .....	CC
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March 2018 Jagarnauth Email .....	EE
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Emails dated May 12, 2019, January 7, 2019 and January 9, 2029 between counsel to the Receiver and counsel for MOD .....	KK
Massey Tower Lien Action Statement of Claim .....	LL
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COURT FILE NO: CV-18-608978-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BRIDGING FINANCE INC. AS AGENT FOR  
2665405 ONTARIO INC.

APPLICANT

- AND -

1033803 ONTARIO INC. AND 1087507 ONTARIO LIMITED

RESPONDENTS

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF *THE BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED

TENTH REPORT OF  
KSV RESTRUCTURING INC.  
AS RECEIVER AND MANAGER

AUGUST 15, 2022

## 1.0 Introduction

1. On November 19, 2018, Bridging Finance Inc., as agent (the "Agent") for 2665405 Ontario Inc. (the "Lender"), made an application to the Ontario Superior Court of Justice (Commercial List) (the "Court") for the appointment of KSV Kofman Inc.<sup>1</sup> ("KSV") as receiver and manager of:
  - a. all the assets, undertaking and property of 1033803 Ontario Inc. ("1033803"), operating as Forma-Con Construction and Forma Finishing, including the real property municipally known as 3420 Queen Street East, Brampton and 407 Basaltic Road, Concord;
  - b. all the assets, undertaking and property of 1087507 Ontario Limited ("1087507") (and together with 1033803, the "FC Debtors"), including the real property municipally known as 4431 Stouffville Road, Stouffville;

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<sup>1</sup> Effective August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

- c. certain assets (the “Forma-Con Related Assets”) of Bondfield Construction Company Limited (“BCCL”) and Bondfield Construction Equipment Ltd. (together with BCCL, 1033803, 1087507 and several other related entities, the “Group”); and
  - d. the real property municipally known as 131 Saramia Crescent, Vaughan owned by Ralph Aquino, a limited guarantor of the indebtedness of the Group to the Lender.
2. The Court granted the relief requested by the Agent on the return of the receivership application and KSV was appointed receiver (the “Receiver”). A copy of the order appointing the Receiver is attached as Appendix “A” (the “Receivership Order”).
  3. Pursuant to an order of the Court issued on December 2, 2019 (the “Bankruptcy Order”), the Receiver was granted authority to file assignments in bankruptcy on behalf of the FC Debtors. On December 19, 2019, the Receiver filed the assignments and KSV was appointed as licensed insolvency trustee of each of the FC Debtors. KSV’s appointments were affirmed at creditors’ meetings convened on January 8, 2020.

### 1.1 Purpose of this Report

1. The Receiver has prepared this report (the “Report”) in response to the proposed Dismissal Motion (the “Dismissal Motion”) to be brought by MOD Developments (197 Yonge) Limited Partnership (“MOD”) in lien litigation commenced by the Receiver against MOD in Court File number CV-19-00616137-0000 (the “Massey Tower Lien Action”). MOD takes the position that:
  - a. the Receiver had no jurisdiction to bring the Massey Tower Lien Action because it is not receiver of either 1428502 Ontario Limited (“1428502”) or 1428508 Ontario Limited (“1428508”);
  - b. there is no privity of contract between MOD and the Receiver (or any of the entities subject to the Receivership Order); and
  - c. the Receiver is not entitled to claim a lien or sue on the Massey Tower Project Agreement (as defined below) since it is not a party to such contract.
2. Pursuant to paragraph 28 of the Receivership Order, the Receiver is seeking advice and directions from the Court on the following questions (the “Receiver’s Questions”):
  - a. Is 1428508 the proper party to the CCDC 17 – 2010 contract dated December 19, 2014 (the “Massey Tower Project Agreement”) rather than 1428502?
  - b. Is the Massey Holdback (as defined below) “Property” of 1033803 within the meaning of the Receivership Order?
  - c. Was the Massey Tower Project Agreement, assigned at law or equity from 1428508 to 1033803?
  - d. Is MOD estopped from asserting or claiming that the current counterparty to the Massey Tower Project Agreement is 1428502 or 1428508?

- e. In the alternative, is the Massey Tower Project Agreement held in trust for 1033803 and is 1033803 entitled to all the benefits thereof?
  - f. Is the Receiver entitled to continue to pursue claims against MOD in the Lien Action and the Delay Action, and defend any counterclaims brought by MOD in such actions?
3. Assuming the above questions are answered affirmatively, the Receiver is seeking an Order:
- a. rectifying the CCDC 17 – 2010 contract dated December 19, 2014 between Forma-Con Construction (a division of 1428502 Ontario Limited) and MOD by changing the name of the Forma-Con entity which is party to the contract to Forma-Con Construction (a division of 1428508 Ontario Limited);
  - b. declaring that the Massey Holdback (as defined below) is Property (as such term is defined in the Receivership Order) of 1033803;
  - c. declaring that the Massey Tower Project Agreement was assigned at law or equity from 1428508 to 1033803;
  - d. in the alternative to (c), if the Massey Tower Project Agreement has not been assigned to 1033803, that the Massey Tower Project Agreement is held in trust for 1033803;
  - e. declaring that MOD is estopped from asserting or claiming that the current counterparty to the Massey Tower Project Agreement is either 1428502 or 1428508;
  - f. declaring that the Receiver is entitled to continue to pursue claims against MOD in the Massey Tower Lien Action and the Delay Action (as defined below) and defend any counterclaims brought by MOD in such actions; and
  - g. an order requiring MOD to pay the Receiver's costs of this motion, including its fees and the fees of its counsel.

## 1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon the Group's unaudited financial information, including its books and records, discussions with its management and discussions with E&Y (as defined below) (collectively the "Information"). The Receiver has not audited, reviewed or otherwise verified the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
2. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Receiver in preparing this Report.

## 2.0 Background

1. 1033803 was incorporated in 1993. Beginning in 2016, it operated a concrete forming business known as Forma-Con Construction (“Forma-Con”) and provided services to construction projects across the Greater Toronto Area and surrounding areas. Prior to that time, 1033803 was the sole shareholder of 1428508 which carried on the Forma-Con business until 1428508 was dissolved and transferred its assets to 1033803. The shares of 1033803 are privately held by members of the Aquino family. 1033803 is related to BCCL, which was a significant general contractor in Southwestern Ontario.
2. BCCL and certain related entities are subject to proceedings under the *Companies’ Creditors Arrangement Act* (“CCAA”) where Ernst & Young Inc. (“E&Y”) has been appointed the CCAA Monitor (the “Monitor”).
3. On December 13, 2018, shortly after the commencement of the receivership proceedings, the Court made an order approving a transaction (the “GF Purchase Agreement”) between the Receiver and GF Equipment Corp. (the “Forma-Con Purchaser”) primarily for the Forma-Con Related Assets. The GF Purchase Agreement was dated November 23, 2018 and was completed on December 14, 2018.
4. At the commencement of the receivership, Forma-Con had 13 ongoing projects (collectively, the “Projects”). Additionally, Forma-Con was providing forming services to BCCL on certain of its projects.
5. As of December 31, 2018, the total estimated accounts receivable owing on the Projects was approximately \$19.9 million, excluding amounts owing from BCCL.
6. Pursuant to the terms of the GF Purchase Agreement, the Forma-Con Purchaser acquired the Receiver’s right, title and interest in certain Forma-Con contracts known as the Partially Completed Contracts (each a “PCC” and collectively, the “PCCs”). The Forma-Con Purchaser completed the work on the projects related to the PCCs. The Forma-Con Purchaser did not acquire the Receiver’s right, title and interest in contracts referred to as the Substantially Completed Contracts (each a “SCC” and collectively, the “SCCs”). The Receiver took steps to complete the work on the SCC projects. By mid-2019, the Receiver had collected the receivables owing on all Projects other than two projects owned by MOD, each of which was an SCC.
7. In respect of the first MOD project, being Woodcliffe MOD (Developments) St. Andrews Inc., and known as the Waterworks Project, the Receiver registered a lien in the amount of \$2,321,000 against the project. The Receiver settled this lien claim in March 2021 for \$850,000.
8. The second MOD project, which is the subject of this Report, is the Massey Project and involved concrete pouring and forming work for the Massey Tower, a condominium located at 197 Yonge Street, Toronto.

9. The Massey Tower Project Agreement was a fixed fee contract in the original amount of \$23,084,770.00 (inclusive of HST). From the date of the Massey Tower Project Agreement until November 18, 2019, Forma-Con performed all of the work and fulfilled the duties of the Trade Contractor (as such term is defined in the Massey Tower Project Agreement) and issued a total of 36 progress billings<sup>2</sup> – 15 from 1428508 in the aggregate amount of \$8,745,000 and 21 from 1033803 in the aggregate amount of \$11,729,116<sup>3</sup>. From the date of its appointment, the Receiver, on behalf of Forma-Con, arranged for the work on the Massey Tower Project to be completed and MOD paid all the invoices issued by Forma-Con during the receivership.
10. All of Forma-Con's progress billings were approved for payment by the Construction Manager (as defined below) and were paid without objection by MOD (less the holdback). Despite the Receiver's completion of the Massey Project, MOD refused to pay the Massey Holdback (as defined below) and the Receiver registered a lien in the amount of \$2,038,704.26 against the Massey Project.
11. The Receiver has prepared a chronology of the key documents and steps related to the Massey Tower Project Agreement, all of which are addressed in this Report:

EVENT	DATE	REPORT REFERENCE
Incorporation of 1033803	June 16, 1993	2.0(1)
Incorporation of Second Floor Ltd. (1428502)	July 6, 2000	2.3(11)
Incorporation of 1428508	July 6, 2000	2.3(6)
Dissolution of Second Floor Ltd. (1428502)	February 19, 2007	2.3(11)
Forma-Con registered as Business Tradename by 1033803	April 14, 2011	2.3(10)
Execution of Massey Tower Project Agreement	December 19, 2014	2.3(1)
1428508 Dissolution Agreement	December 31, 2014	2.4(3)
Tucker advised that proper party is 1428508 in writing re: Terraprobe insurance	October 26, 2015	2.3 (12)
Delivery to MOD of first 1428508 Insurance Certificate (included in Progress Billing No. 1)	October 30, 2015	2.3(15)
1428508 Progress Billing Nos. 1-9	October 31, 2015 – June 20, 2016	2.5(1)
1428508 Articles of Dissolution Issued	June 21, 2016	2.4(7)
1428508 Progress Billing Nos. 10-15	July 20, 2016-December 21, 2016	2.5(1)
Delivery to MOD of first 1033803 Insurance Certificate (included in Progress Billing No. 16)	January 20, 2017	2.5(2)

<sup>2</sup> As noted in section 2.5(4) below, the Receiver issued two additional progress billings after the commencement of the Receivership proceeding. The sum of the progress billings exceeded the fixed fee due to change orders.

<sup>3</sup> In each case, based on the Receiver's review of the Project Billings.

EVENT	DATE	REPORT REFERENCE
1033803 Progress Billing No. 16*	January 20, 2017	2.5(2)
1033803 Progress Billing No. 17*	February 17, 2017	2.5(2)
1033803 Progress Billing No. 18	March 20, 2017	2.5(2)
Email exchange with Tucker re: addition of 1033803 as "loss payee" on Primo insurance	April 4, 2017	2.5(10)
Delivery of revised Primo Insurance Certificate showing 1033803 as "loss payee"	April 4, 2017	2.5(12)
1033803 Progress Billing Nos. 19-21	April 20, 2017 – June 20, 2017	2.5(2)
Tucker provides insurance certificate from Toro Glasswall Inc. identifying 1033803 as "loss payee"	June 26, 2017	2.5(18)
1033803 Progress Billing Nos. 22-29	July 20, 2017 – February 28, 2018	2.5(2)
E-mail exchange between Tucker and Toro Aluminum regarding addition of 1033803 as an additional insured to Toro Aluminum's policy	March 7, 2018	2.5(18)
1033803 Progress Billing Nos. 30-32	March 20, 2018 – May 23, 2018	2.5(2)
Tucker provides insurance certificate from Thyssen identifying 1033803 as a "loss payee"	May 23, 2018	2.5(18)
1033803 Progress Billing Nos. 33-35	June 30, 2018 – August 20, 2018	2.5(2)
Receivership Order	November 19, 2018	1.0(1)
1033803 Progress Billing No. 36	November 22, 2018	2.5(2)
GF Agreement	November 23, 2018	2.0(3)
Receiver's First Progress Billing	December 15, 2018	2.5(4)
MOD notifies Receiver of 1428502 Issue	December 21, 2018	2.6(4)
Receiver's Second Progress Billing	December 21, 2018	2.5(4)
Close-Out Agreement	December 27, 2018	2.6(7)
Application to Vacate Lien	February 19, 2019	2.6(16)
Receiver's Statement of Claim in Massey Tower Lien Action	March 13, 2019	2.6(15)
MOD Lien Statement of Defence and Counterclaim	July 15, 2019	2.6(19)
Lien Litigation Timetable Endorsement	November 1, 2021	2.6(20)
Deliveries of Affidavits of Documents	February 3/February 15, 2021	2.6(21)
Delivery of Motion for Leave by MOD to Dismiss Massey Tower Lien Action	November 1, 2021	2.6(19)

## 2.1 Documents Reviewed by the Receiver in Preparation of this Report

1. The Receiver is in possession of the Minute Books of each of 1033803 and 1428508 and has reviewed same.
2. Some of the historic records of Forma-Con are in the possession of the Monitor. The Receiver asked the Monitor to conduct a targeted search of BCCL's records and to provide copies of relevant documents, which were screened for privilege by the Monitor.
3. In addition to the searches referenced above, the Monitor conducted a search of: (i) BCCL's records for certain emails sent or received by Gordon Graham, who was Forma-Con's project manager for the Massey Project; and (ii) BCCL's records for certain emails sent or received by Silvna Crognale, an employee of the Group who was responsible for sending out Forma-Con's progress billings and related documentation.

## 2.2 Parties to the Massey Tower Project Agreement

1. On December 19, 2014 (the "Contract Date"), Forma-Con entered into the Massey Tower Project Agreement with MOD. The Receiver has been advised by Steven Aquino, formerly the President of BCCL and sole shareholder of 1428508, that due to a typographical error, the last number in 1428508 was entered as a "2" when the Massey Tower Project Agreement was prepared. The parties at all times intended the counterparty to be Forma-Con Construction (a division of 1428508), which is the legal entity that operated as Forma-Con at the time that the Massey Tower Project Agreement was executed. A copy of the Massey Tower Project Agreement is attached as Appendix "B".
2. Under the Massey Tower Project Agreement, Tucker HiRise Construction Inc. ("Tucker") was appointed as the Construction Manager for the project (the "Construction Manager").
3. Tucker, as Construction Manager, was Forma-Con's primary contact for all work and enquiries related to the Massey Project. Pursuant to the Standard Conditions ("SC") section 6.1 of the Massey Tower Project Agreement, all communications between Forma-Con and MOD were to be through Tucker. It is the Receiver's understanding that all Forma-Con accounts and contract change orders were sent to Tucker for approval before being issued to MOD.
4. Pursuant to the General Conditions ("GC") section 2.1 of the Massey Tower Project Agreement, Tucker was authorized to act on behalf of MOD to the extent provided for in the Massey Tower Project Agreement. The scope of such authority included: (i) providing administration of the Massey Tower Project Agreement (GC section 2.2.1(1)); (ii) receiving all questions in writing by Forma-Con for interpretations and findings relating to interpretation of the Massey Tower Project Agreement (GC section 2.2.2(3)); and (iii) giving interpretations and making findings on matters in question relating to the requirements of the Massey Tower Project Agreement (GC section 2.2.1(4)). Subject to a dispute mechanism, GC section 8.2.2 of the Massey Tower Project Agreement provides that determinations of the Construction Manager are final.

5. There are two provisions in the MOD Tower Project Agreement which reference assignment. SC Section 9.1 of the contract states: "The Contract shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.". There is no reference to "permitted assigns" or any consent requirements. However, GC section 1.4.1 states: "Neither party to the Contract shall assign the Contract or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld."
6. 1428508 was incorporated on July 6, 2000. A copy of 1428508's Articles of Incorporation are attached as Appendix "C". A copy of the By-Laws of 1428508, signed by Michael Solano as the sole director of the corporation and Steve Aquino as sole shareholder of the corporation, are attached as Appendix "D" (the "By-Laws").
7. At the time that the Massey Tower Project Agreement was executed, Michael Solano was the sole officer of 1428508 with authority to sign agreements on behalf of 1428508 pursuant to its By-Laws. Attached hereto as Appendix "E" is an Annual Resolution of 1428508 dated May 9, 2013 appointing Michael Solano as President and Secretary of 1428508. The Massey Hall Project Agreement was executed on behalf of Forma-Con by "Michael Solano, President" on December 19, 2014. The Receiver does not believe that Mr. Solano was ever an officer or director of 1428502. Michael Solano died in January 2017.
8. At all material times, 1428508 was a wholly-owned subsidiary of 1033803. On December 20, 2014, a resolution was passed retroactively confirming that the 10 common shares of 1428508 held by Steven Aquino were transferred to 1033803 as of December 30, 2007 (the "2014 Resolution"). The 2014 Resolution also confirmed the prior appointment of Michael Solano as President of 1428508. A copy of the resolution approving the retroactive transfer of the common shares of 1428508 from Steven Aquino to 1033803 is attached as Appendix "F".
9. Attached as Appendix "G" is a copy of the Shareholder Ledger for 1428508 which shows that Steven Aquino transferred all of the common shares of 1428508 to 1033803 on December 30, 2007. Attached hereto as Appendix "H" is a Shareholder Register for 1428508 which shows 1033803 as the sole shareholder of 1428508.
10. In 2014, Forma-Con was a registered tradename of 1033803, the sole shareholder of 1428508. A copy of a Tradename certificate showing 1033803 as the registered user of the tradename "Forma-Con" for the period from April 14, 2011 to April 13, 2016 is attached as Appendix "I". A copy of a Tradename certificate showing 1033803 as the registered user of the tradename Forma-Con for the period from July 6, 2016 to July 5, 2020 is attached as Appendix "J".
11. 1428502 was never a part of the Group. The corporate business number 1428502 carried on a business known as Second Floor Ltd. ("Second Floor"), which was incorporated on July 6, 2000. Second Floor ceased to carry on business and the corporation was cancelled on February 19, 2007, over seven years before the Massey Tower Project Agreement was executed. The registered address for Second Floor was 3730 Kingston Road, Toronto, Ontario and the registered administrator was Nora Cleary. This address is not related to any of the Bondfield entities and Nora Cleary was never a Bondfield employee or director. A Corporate Profile Report for Second Floor Ltd. obtained from the Province of Ontario Ministry of Government Services is attached hereto as Appendix "K".



12. Second Floor/1428502 did not exist when the Massey Tower Project Agreement was executed and it could not have been a party to the contract. The Receiver is informed by Steven Aquino that it was Forma-Con's intent at the time that the Massey Tower Project Agreement was signed that MOD's counterparty would be 1428508.
13. From the Contract Date until December 31, 2016, progress billings on the Massey Tower Project were issued by 1428508. No billings were ever submitted by 1428502.
14. All progress billings delivered to MOD included a WSIB Clearance Certificate confirming that Forma-Con was in compliance with its WSIB obligations. The delivery of such certificates to MOD was a condition precedent to MOD's obligation to pay a progress billing pursuant to GC section 5.2.6.3 of the Massey Tower Project Agreement. Each of the WSIB Certificates delivered between the Contract Date and December 31, 2016 (the "1428508 Clearance Certificates") clearly identify the parties to the Massey Tower Project Agreement as: (i) **Contractor Legal/Tradename:** 1428508 Ontario Limited / Forma-Con Construction (ii) **Principal Legal/Tradename:** MOD Developments (197 Yonge) LP/Massey Tower. Attached as Appendix "L" are the 1428508 Clearance Certificates.
15. Pursuant to GC section 11.1.3 of the Massey Tower Project Agreement, Forma-Con was required to obtain, maintain and pay for "wrap-up" general liability insurance in the name of, among others, the Owner (as defined in the Massey Tower Project Agreement, being MOD) and the Trade Contractor (as defined in the Massey Tower Project Agreement, being Forma-Con). The insurance certificate provided to MOD dated October 30, 2015 to satisfy this condition indicates that the insurance was issued in favour of Forma-Con Construction, a Division of 1428508 Ontario Limited (the "1428508 Insurance Certificate"). Attached as Appendix "M" is a copy of the 1428508 Insurance Certificate.
16. The Receiver seeks rectification of the Massey Tower Project Agreement to confirm that MOD's original counterparty to that Agreement is 1428508, which was the mutual intention of the parties. As discussed in greater detail below, MOD's course of conduct evidences that it knew that it was first contracting with 1428508 and subsequently that it knew it was contracting with 1033803.
17. 1428502 was never part of the Group. It was not an existing corporation when the Massey Tower Project Agreement was executed and 1428502 did not provide any services or receive any payments from MOD.

### **2.3 The Dissolution of 1428508 and Assignment to 1033803**

1. On December 30, 2014, Michael Solano, as sole director of 1428508, and 1033803, as sole shareholder of 1428508, entered into a Unanimous Shareholders Agreement (the "Shareholders Agreement"). Pursuant to the Shareholders Agreement, the director was relieved of all powers and duties as a director and 1033803 assumed all of the rights, powers, duties and obligations of the director of 1428508. A copy of the Shareholders Agreement is attached as Appendix "N".

2. On December 31, 2014, 1033803, as sole shareholder of 1428508, passed a resolution approving the dissolution of 1428508 (the "Dissolution Resolution"). The Dissolution Resolution provided that:
  - a. the property of 1428508 shall be distributed to 1033803 and any debts, obligations or liabilities shall be discharged, effective on December 31, 2014; and
  - b. the entering into by 1428508 of a dissolution agreement substantially in the form of the draft agreement submitted to 1033803, providing for the distribution of the 1428508's property to 1033803, and the assumption by the 1033803 of 1428508's remaining debts and obligations, if any, all upon the terms and conditions set forth in the dissolution agreement, is authorized and approved.

A copy of the Dissolution Resolution is attached as Appendix "O".

3. 1428508, as transferor, and 1033803, as transferee, entered into a Dissolution Agreement dated December 31, 2014 (the "Dissolution Agreement").
4. Pursuant to the Dissolution Agreement:
  - a. effective as at the date of the Dissolution Agreement, 1428508 grants, assigns, transfers, conveys and sets over to 1033803, as part of the winding-up of 1428508 and the distribution thereon of its property to 1033803, all of the right, title and interest of 1428508 in and to all of its property, assets and business, both real and personal, movable and immovable, wherever situate, including, without limiting the generality of the foregoing, all cash on hand and in the bank, accounts receivable, refunds, rebates, contracts and goodwill, including, in particular, the goodwill of the name and all rights of whatsoever nature and kind to which 1428508 is entitled (section 1);
  - b. 1033803 expressly assumes and undertakes to pay and discharge and to indemnify and save harmless 1428508 in respect of all of the remaining liabilities and obligations of 1428508 (if any), but to the extent only of the amount received by 1033803 on the winding up and distribution provided for herein and in accordance with any limitations in the *Business Corporations Act* (Ontario) (section 2);
  - c. 1428508 constitutes and appoints 1033803, its successors and assigns, the true and lawful attorney of 1428508 for and in the name of, or otherwise on behalf of, 1428508 with full power of substitution to (i) do and execute all acts, deeds, matters and things whatsoever necessary for the assignment, transfer and conveyance of any interest in the property, assets and business, both real and personal, movable and immovable, wherever situate of 1428508 to 1033803, its successors and assigns; and (ii) make, execute and/or file any tax returns, elections, designations, forms or other filings or documents relating to 1428508 (section 5(a)); and
  - d. the power of attorney set forth in the Dissolution Agreement is granted by 1428508 to 1033803 in contemplation of the dissolution of 1428508, and such power of attorney being coupled with an interest shall not be revoked by the certificate of dissolution being issued by the Ministry of Government and Consumer Services or be otherwise revoked (section 5(b)).

A copy of the Dissolution Agreement is attached as Appendix "P".

5. The Dissolution Agreement provides that the agreement shall not constitute an assignment or attempted assignment of any contract to which 1428508 is a party which is not assignable without the consent or approval of any third party and such consent or approval has not been obtained. Pursuant to the Dissolution Agreement, such contracts shall be held in trust for 1033803 and performed by 1033803 in the name of 1428508, and all benefits derived thereunder shall be for the account of 1033803 (section 4).
6. In 2015, Michael Solano, in his capacity as an officer of 1428508, signed a certificate confirming that all of the property of 1428508 had been distributed and all of the liabilities of 1428508 had been satisfied (the "Dissolution Certificate"). A copy of the Dissolution Certificate is attached as Appendix "Q".
7. The Ministry of Consumer and Commercial Relations issued Articles of Dissolution for 1428508 effective June 21, 2016<sup>4</sup> (the "Articles of Dissolution"). Section 5 of the Articles of Dissolution confirms that all of 1428508's assets were distributed to 1428508's shareholders (i.e., 1033803) pursuant to section 238(4) of the *Business Corporations Act* (Ontario). The Articles of Dissolution are effective as of June 21, 2016. A copy of the Articles of Dissolution is attached as Appendix "R".

#### 2.4 The Massey Project and MOD Developments Inc.

1. From the Contract Date until December 31, 2016, progress billings were issued by 1428508 and MOD paid 1428508 for such work (less the required holdback). The aggregate amount of these progress billings was \$8,745,000<sup>5</sup>. As noted in paragraph 2.2(14) of this Report, all progress billings issued by 1428508 included WSIB clearance certificates which identified MOD's counterparty as 1428508. Attached as Appendix "S" are copies of all progress billings issued by 1428508 with respect to the Massey Project.
2. From January 1, 2017 until the appointment of the Receiver in November 2018, progress billings were issued by 1033803<sup>6</sup> and MOD paid 1033803 for such work (less the required holdback). The aggregate amount of these progress billings was \$11,729,116<sup>7</sup>. Attached as Appendix "T" are copies of all progress billings issued by 1033803 with respect to the Massey Project (the "1033803 Progress Billings").<sup>8</sup>

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<sup>4</sup> The Receiver understands that 1428508 continued to issue progress billings on the Massey Project until December 31, 2016 notwithstanding its dissolution earlier in 2016. The Receiver has made enquiries about this with the Group's former management and has not been able to determine why progress billings were issued by 1428508 subsequent to its dissolution to the end of 2016.

<sup>5</sup> Based on the Receiver's review of the Progress Billings.

<sup>6</sup> One invoice for March 2018 was issued on 1428508 letterhead but was accompanied by a WSIB clearance certificate identifying 1033803 as the contractor. The name on the invoice is an error.

<sup>7</sup> Based on the Receiver's review of the Progress Billings.

<sup>8</sup> The Receiver was unable to locate the Progress Billings dated July 20, 2018; August 20, 2018, and November 22, 2018 in the Information that was reviewed. Copies of the Progress Billings from MOD's records have been included.

3. Based on the Receiver's review of the 1033803 Progress Billings, it appears that in all but two instances<sup>9</sup>, each of the 1033803 Progress Billings includes a WSIB clearance certificate which clearly identifies the parties to the Massey Tower Project Agreement as: (i) **Contractor Legal/Tradename:** 1033803 Ontario Inc. / Forma-Con Construction (ii) **Principal Legal/Tradename:** MOD Developments (197 Yonge) LP/Massey Tower.
4. From November 19, 2018 until December 14, 2018, progress billings were issued by the Receiver on behalf of 1033803 and/or the Forma-Con Purchaser<sup>10</sup>. Copies of (i) a progress billing dated December 21, 2018 for the period from November 1, 2018 to November 30, 2018; and (ii) a progress billing dated December 15, 2018 is attached as Appendix "U" (collectively, the "Receivership Progress Billings"). MOD paid all progress billings (less the required holdback) issued during the receivership period.
5. No progress billings were ever issued by 1428502 and no payments were ever made to 1428502.
6. The Receiver understands that all cheques issued by MOD in relation to the Massey Project were made payable to "Forma-Con Construction".
7. Below is a side-by-side comparison of a 1428508 progress billing dated June 30, 2016 (the "2016 Billing") and a 1033803 progress billing dated June 30, 2018 (the "2018 Billing").<sup>11</sup>

FORMA-CON CONSTRUCTION (A DIVISION OF 1421591 ONTARIO LIMITED)		407 Beaulieu Road Caledon, Ontario L4K 4R6 Phone (905) 303-8010 Fax (905) 303-8013	FORMA-CON CONSTRUCTION (A DIVISION OF 1033803 ONTARIO, INC.)		407 Beaulieu Road Caledon, Ontario L4K 4R6 Phone (905) 303-8010 Fax (905) 303-8013
<p style="text-align: center;"><b>POSTED</b></p> <p>APPLICATION FOR PAYMENT MOD DEVELOPMENTS (197 YONGE) LP c/o TUCKER REIDIS CONSTRUCTION 3155 VICTORIA PARK AVENUE TORONTO, ONTARIO M2M 3J4</p> <p>Project: 15300 MASSEY TOWER Date: Jun 20/16 Appl #: 9</p>			<p>APPLICATION FOR PAYMENT MOD DEVELOPMENTS (197 YONGE) LP c/o TUCKER REIDIS CONSTRUCTION 3155 VICTORIA PARK AVENUE TORONTO, ONTARIO M2M 3J4</p> <p>Project: 15300 MASSEY TOWER Date: Jun 30/18 Appl #: 33</p>		
			Total		
1. Original Contract Sum	\$20,429,000.00		1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00		2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00		3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00	4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$4,850,000.00		5. Total Progress	\$2,003,000.00	
6. Holdback	\$489,000.00		6. Holdback	\$2,003,000.00	
7. Holdback Released	\$0.00		7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$489,000.00		8. Current Holdback (6-7)	\$2,003,000.00	
9. Total Progress Less Curr. Holdback (5-8)	\$4,401,000.00	\$4,401,000.00	9. Total Progress Less Curr. Holdback (5-8)	\$18,027,000.00	\$18,027,000.00
10. Less line 9 from previous application	\$4,077,000.00		10. Less line 9 from previous application	\$17,757,000.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$324,000.00		11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$270,000.00	
12. Balance Unpaid Under Contract (4-9)	\$16,028,000.00	\$16,028,000.00	12. Balance Unpaid Under Contract (4-9)	\$2,402,000.00	\$2,402,000.00
13. GST/HST BN # 863746692	\$42,120.00		13. GST/HST BN # 135726021	\$25,100.00	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$366,120.00		14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$295,100.00	

<sup>9</sup> The WSIB Certificates attached to the first two Progress Billings issued by 1033803, dated January 20, 2017 and February 17, 2017, respectively, have WSIB Certificates that identify the Trade Contractor as 1428508. The remaining 1033803 Progress Billings have a WSIB Certificate attached which identifies 1033803 as the Trade Contractor.

<sup>10</sup> Under the GF Purchase Agreement, the Forma-Con Purchaser performed services on some of Forma-Con's projects and was entitled to receive the accounts receivable for the work performed.

<sup>11</sup> The Receiver randomly selected a 1428508 progress billing and a 1033803 progress billing; however, these billings are representative of the invoices reviewed by the Receiver.

8. As illustrated, both billings are issued by “Forma-Con Construction”. The 2016 Billing clearly indicates that Forma-Con Construction is “a division of 1428508 Ontario Ltd.” whereas the 2018 Billing clearly indicates that Forma-Con Construction is a “a division of 1033803 Ontario Inc.”.
9. The Receiver has spoken to Steven Aquino and understands that there were no changes in the manner that Forma-Con provided its services prior to and after the dissolution of 1428508. In that respect, the Receiver has been advised from and after the date that 1033803 commenced performing the work on the Massey Project and 1428508 ceased performing this work, that there were no delays in construction due to the dissolution. The Receiver further understands that MOD never raised any concern to Forma-Con’s management about the services being provided by 1033803 rather than 1428508 and that it never raised a concern regarding the change of name. In that respect, MOD paid 1033803 for all invoices issued by 1033803 (other than the statutory holdback).
10. MOD had notice of the assignment of the Massey Tower Project Agreement. As noted in 2.2(15) of this Report, Forma-Con was required to obtain, maintain and pay for “wrap-up” general liability insurance in the name of, among others, MOD, pursuant to GC section 11.1.3 of the Massey Tower Project Agreement. On February 3, 2017, Forma-Con provided a Certificate of Insurance to MOD clearly indicating that MOD had been added as an additional insured on the general liability insurance policy of “Forma Con Construction a division of 1033803 Ontario Inc.” with respect to “Work usual to the operation of the Named Insured with respect to: Massey Tower – 197 Yonge Street, Toronto, Ontario” (the “1033803 Insurance Certificate”). A copy of the 1033803 Insurance Certificate is attached as Appendix “V”.
11. Tucker, in its capacity as Construction Manager under the Massey Project, had repeated notice that (i) the original counterparty of the Massey Tower Project Agreement was 1428508 and (ii) 1033803 assumed the obligations of 1428508. Tucker’s conduct, as noted below, shows that it was aware of the assignment of the Massey Tower Project Agreement and acknowledged that 1033803 was a proper assignee of the contract. We provide several examples below.
12. Before 2017, Tucker (on MOD’s behalf) knew that the Forma-Con entity it dealt with was 1428508 and not 1428502. It regularly facilitated insurance certificates with 1428508 as an additional insured:
  - a. On October 26, 2015, Pieter Jagarnauth, an assistant site manager on the Massey Tower project for Tucker, emailed with Michael Diez de Aux, a Geotechnical Engineer on the project regarding use of the tower crane. Mr. Jagarnauth initially requested an insurance certificate in the name of “Forma-Con Construction (A DIVISION OF 1428502 ONTARIO LIMITED).” [emphasis added.] When Gordon Graham of Forma-Con was added to the email chain he corrected this error, stating that the insurance must list Forma-Con “exactly as ... Forma-Con Construction (A DIVISION OF 1428508 ONTARIO LIMITED).” [emphasis added.] The October 26, 2015 email chain is attached hereto as Appendix “W”.
  - b. Three days later, Tucker obtained an insurance certificate to add “Forma-con, a Division of 1425808 Ontario Ltd” as an additional insured. A copy of an October 29, 2015 email from Tucker to Forma-Con, with attached certificate, is attached hereto as Appendix “X”.

- c. In November 2015, Tucker obtained an insurance certificate in the name of "FORMA-CON A DIVISION OF 1425808 ONTARIO LTD" and provided it to Forma-Con. The November 24, 2015 email from Tucker with attached insurance certificate is attached hereto as Appendix "Y".
  - d. In October 2016, Tucker obtained an insurance certificate to add "Forma-con a Division of 1425808 Ontario Ltd" as an additional insured. A copy of an October 7, 2016 email from Tucker to Forma-Con, with attached certificate is attached hereto as Appendix "Z".
13. Tucker also received notice that, as of 2017, the Massey Tower Project Contract would be performed by 1033803. An example of this notice occurred in April 2017, as discussed below:
- a. In April 2017, Gordon Graham, the Forma-Con project manager on the Massey Project, emailed Bruce Rogers (Tucker's then site manager for the Massey Project) regarding evidence of insurance and Primo Mechanical ("Primo"). Primo was a mechanical contractor on the Massey Project. The Receiver has been advised by Steven Aquino that Primo had requested that Forma-Con's crane be used to lift certain of Primo's equipment to the 9<sup>th</sup> floor of the Massey Project. Forma-Con advised Tucker that the crane could only be used if Forma-Con was added as a loss payee on Primo's insurance policy for the Massey Project. Tucker originally arranged for 1428508 to be added to such policy.
  - b. On April 4, 2017, Mr. Graham told Mr. Rogers by email that evidence of insurance showing 1428508 as a loss payee was no longer correct and that 1033803 must be added instead to the insurance certificate for the Massey Project. Mr. Rogers pointed out that previous insurance certificates were in the name of "Forma con Constr. div. of 1428508 Ont. Ltd." and was advised by Mr. Graham that "That is no longer correct". Mr. Rogers replied "Ok I'll get it changed". Attached hereto as Appendix "AA" (the "April Tucker Email") is the email exchange between Mr. Graham and Mr. Rogers.
  - c. On April 4, 2017, Mr. Rogers forwarded the notice of change of insured party to Paul Francinelli of Primo Mechanical. Attached hereto as Appendix "BB" is the email between Mr. Rogers and Mr. Francinelli.
  - d. On April 4, 2017, Tucker provided a revised certificate of insurance adding "Forma-Con Construction a division of 1033803 Ontario Ltd." as a loss payee on the policy for a project described as "Massey Towers – 197 Yonge Street, Toronto, ON" (the "MOD 1033803 Insurance Certificate"). Attached as Appendix "CC" is a copy of the MOD 1033803 Insurance Certificate.
14. Throughout 2017 and 2018, Tucker continued to acknowledge and consent, as evidenced by insurance certificates, that 1033803 was the counterparty performing the Massey Tower Project Contract. Some examples follow here:
- a. On June 26, 2017, Mr. Rogers sent an email to Mr. Graham enclosing evidence that "Forma Con Construction, a division of 1033803 Ontario Inc." had been added as a loss payee on the liability insurance policy of Toro Glasswall Inc. ("Toro Glasswall") with respect to "Hoisting of Glasswall product @ Massey Towers, 197 Yonge Street, Toronto project". Attached hereto as Appendix "DD" is Mr. Roger's email dated June 26, 2017 enclosing the Toro Glasswall insurance certificate.

- b. On March 7, 2018, Mr. Jagarnauth forwarded an email exchange between Tucker and representatives of Toro Aluminum (“Toro Aluminum”) regarding the use of Forma-Con’s cranes at the Massey Tower Project site to Mr. Graham (the “March 2018 Jagarnauth Email”). In the forwarded exchange, Mr. Jagarnauth advised Toro Aluminum that:

“As discussed yesterday Formacon prior to hoisting any of your windows onto their platform with the crane is requesting the following;

-Formacon to be named as an additional insured on your Policy, copy of another’s trades attached for your reference.

(FORMA-CON CONSTRUCTION, A DIVISION OF 1033803 ONTARIO LTD)”

A copy of the March 2018 Jagarnauth Email is attached as Appendix “EE”.

- c. On May 23, 2018, Mr. Rogers sent an email to Mr. Graham with a reference line that reads “insurance document for Thyssen elevator equipment crane lifts”. Attached to the May 23, 2018 email is an insurance certificate which adds “Forma Con Construction (a division of 1033803 Ontario Inc.)” as a loss payee on Thyssen’s general liability insurance with respect to “Project at Massey Tower at 197 Yonge Street”. A copy of the May 23, 2018 email enclosing the Thyssen insurance certificate is attached as Appendix “FF”.
15. The Receiver understands that MOD, either directly or through Tucker: (i) authorized 1033803 to be added as a loss payee on Primo’s insurance policy; (ii) accepted coverage as an additional insured party under 1033803’s general liability policy in satisfaction of Forma-Con’s obligations to provide evidence of such coverage under GC section 11.1.3 of the Massey Tower Project Agreement; (iii) paid all accounts issued by 1033803 (less the holdback) during this time period; (iv) accepted WSIB clearance certificates in the name of 1033803 as evidence of satisfaction of Forma-Con’s obligations to provide same pursuant to GC section 5.2.6.3; and never asked for any WSIB clearance certificates in the name of 1428508 after being notified of the change from 1428508 to 1033803.
16. The Receiver’s position is that the Massey Hall Project Agreement was validly assigned from 1428508 to 1033803 and that no consent was required for this assignment. However, if consent was required, the Receiver has not found any evidence that *express* consent was provided by MOD. Nonetheless, given the circumstances outlined in this Report, it is the Receiver’s position that MOD had notice of the assignment, did not object to it, and through its actions and conduct (or through the actions and conduct of the Construction Manager, which are binding on MOD) consented to or otherwise accepted the assignment of the Massey Tower Project Agreement.
17. In any event, pursuant to the Dissolution Agreement, any rights under the Massey Hall Project Agreement which were not assigned to 1033803 are held in trust for 1033803 and can be performed by 1033803 in the name of 1428508, and all benefits derived thereunder shall be for the account of 1033803.

## 2.5 Receiver's Activities in Relation to the Massey Tower Project Agreement

1. At the commencement of these proceedings, the Receiver undertook a process to maximize the value of Forma-Con's business and assets for its creditors. As set out in the Second Report of the Receiver dated December 10, 2018 (the "Second Report"), the Receiver recommended approval of a sale agreement for the Forma-Con Related Assets to the Forma-Con Purchaser. Pursuant to the GF Purchase Agreement, the PCCs were assumed and performed by the Forma-Con Purchaser and the Receiver took steps to complete the SCCs. At paragraph 3.1(4) of the Second Report, the Receiver noted that the GF Purchase Agreement had the following advantages:
  - a. it avoids interruptions on those Forma-Con projects that will be completed by the Forma-Con Purchaser, and it provides the Receiver with a small window of time to discuss with representatives of the SCCs the basis on which the SCCs can be completed;
  - b. it provides the Receiver with a mechanism to rent the Purchased Assets from the Forma-Con Purchaser to complete the SCCs; and
  - c. to the extent interruptions in the performance of the projects are eliminated or minimized, there is a greater prospect that accounts receivable will be collected on the PCCs and the SCCs.

A copy of the Second Report is attached hereto as Appendix "GG" (without attachments). A copy of the Order of the Honourable Justice Dunphy dated December 13, 2018 approving the GF Purchase Agreement is attached as Appendix "HH". An Order of the Honourable Justice Dunphy dated December 13, 2018 approving the Receiver's activities in the Second Report is attached as Appendix "II".

2. As noted above, the Massey Project is a SCC under the GF Purchase Agreement.
3. The Receiver determined that its ability to collect the Massey Holdback in the amount of \$2,038,704.26 could be impaired if the Massey Project was not completed. Accordingly, the Receiver negotiated with MOD to settle the terms of a close-out agreement for the Massey Project in December of 2018 (the "Close-Out Agreement").
4. On December 21, 2018, in the course of these negotiations, counsel for MOD raised, for the first time, MOD's position that the Receiver purportedly lacks authority to deal with the Massey Tower Project Agreement on the basis that the Receivership Order does not give the Receiver any authority with respect to 1428502.
5. On December 27, 2018, the Receiver and MOD entered into the Close-Out Agreement, which set out the terms pursuant to which the Receiver agreed to complete the work on the Massey Project. A copy of the Close-Out Agreement is attached is Appendix "JJ". The Receiver entered into the Close-Out Agreement to preserve 1033803's claim to the Holdback (as defined below). The Receiver would not have undertaken the work required to fulfill 1033803's obligations under the Close-Out Agreement without an express understanding that the Holdback was an asset of 1033803. The Receiver performed the work and MOD benefited from the completion of the work.



6. In recital 5 of the Close-Out Agreement, the parties acknowledge that a holdback in the amount of \$2,038,704.26 (net of taxes) (the "Massey Holdback") related to the Massey Project is Property, as such term is defined in the Receivership Order over which the Receiver has been appointed pursuant to the Receivership Order. Pursuant to paragraph 2 of the Receivership Order, "Property" is defined to include "all of the assets, undertakings and properties of the Debtors [1033803 and 1087507] **acquired for, or used in relation to a business carried on by the Debtors**, including all proceeds thereof" [emphasis added].
7. At the time of entering into the Close-Out Agreement, MOD had already raised its newfound concern about the proper counterparty to the Massey Tower Project Agreement. Section 1.6(a) of the Close-Out Agreement states:
 

*"Notwithstanding the Parties agreement on the terms for performance of the Services pursuant to this Agreement, the Parties acknowledge and agree that:*

*(a) entering into this Agreement is without prejudice to the Parties' rights as it relates to disputes regarding the identity of the counterparty to the Owner under the Construction Contract (1428502 Ontario Limited versus 1033803 Ontario Inc.);".*
8. Nothing in section 1.6(a) of the Close-Out Agreement detracts from the mutually agreed recital that the Massey Holdback is Property (as such term is defined in the Receivership Order) over which the Receiver has been appointed as receiver.
9. At section 1.10, the parties also expressly agreed that any dispute with respect to or arising out of the Close-Out Agreement would be determined by the Ontario Superior Court of Justice (Commercial List).
10. From and after the date of the Close-Out Agreement, MOD accepted directions from the Receiver on the payment of accounts submitted by sub-contractors who provided services related to the Massey Project. Attached hereto as Appendix "KK" is: (i) an email exchange between counsel to the Receiver and counsel for MOD dated May 12, 2019 with respect to accounts owing to LIUNA Local 183 and IUOE Local 793; (ii) an email exchange between counsel to the Receiver and counsel for MOD dated January 7, 2019 with respect to accounts owing to Cooper Equipment Rental; and (iii) an email exchange between counsel to the Receiver and counsel for MOD dated January 9, 2019 with respect to accounts owing to Local 793. The Receiver was advised that MOD paid these accounts. In other words, MOD was prepared to pay, and did pay, subcontractors of Forma-Con notwithstanding its position with respect to whether 1428508 was a party to the Massey Tower Project Agreement; however, it has continued to refuse to pay the Receiver for this very reason.
11. The Receiver, on behalf of 1033803, performed all of the remaining work required under the Close-out Agreement and sent billings in the amount of \$420,392.43 to MOD with respect to such work. MOD paid for all services rendered during the receivership.<sup>12</sup>
12. The Receiver relied on MOD's performance of its obligations under the Massey Tower Project Agreement and has expended considerable resources in performing Forma-Con's obligations in order to complete the Project.

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<sup>12</sup> Pursuant to section 1.4(1) of the Close-Out Agreement, the parties agreed that such payments could be set off by MOD against the Massey Holdback.

13. MOD refused to pay the Massey Holdback to the Receiver. On March 13, 2019, the Receiver commenced an action with respect to a lien registered against the Massey Project in a timely manner. A copy of the Massey Tower Lien Action Statement of Claim is attached as Appendix "LL".
14. On February 19, 2019, MOD filed a motion to have the lien vacated and to post a Financial Guarantee Bond in the amount of \$2,088,704.26. The Motion was supported by an Affidavit of Michael Farace sworn on February 20, 2019 (the "Farace Lien Affidavit"). A copy of the Farace Lien Affidavit is attached as Appendix "MM".
15. In seeking to vacate the lien, MOD did not make any allegations to the effect that the Receiver did not have authority to file the lien and did not indicate the counterparty to the Massey Tower Project Agreement was not the party which had filed the lien. The Farace Lien Affidavit states that the lien claimant is "Forma-Con Construction" without any reference to a numbered company (i.e., 1428502, 1428508 or 1033803) and the corresponding Construction Lien Bond attached as Exhibit C to the Farace Lien Affidavit indicates that the bond covers the claims of "Forma-Con Construction and others" without any reference to a numbered company (the "Lien Bond"). It is clear that MOD was aware that the lien was asserted by the Receiver, in its capacity as receiver of 1033803, as paragraph 7 of the Farace Lien Affidavit specifically indicates that the lien was filed by the Receiver in such capacity.
16. The lien was vacated pursuant to an Order of Associate Justice Wiebe dated February 21, 2019, which only names "Forma-Con Construction" as the lien claimant (the "Lien Vacating Order"). There is no reference to any numbered company. A copy of the Lien Vacating Order is attached as Appendix "NN".
17. On July 15, 2019, MOD filed an Amended Statement of Defence and Counterclaim (the "Lien Statement of Defence and Counterclaim"), alleging numerous set-offs under the Massey Tower Project Agreement and relying on the Massey Tower Project Agreement to assert a counter-claim against the Receiver. The Lien Statement of Defence and Counterclaim was amended on November 18, 2020. A copy of the amended Lien Statement of Defence and Counterclaim is attached as Appendix "OO". The Lien Statement of Defence and Counterclaim includes a statement that 1428502 is not subject to the Receivership Order, but otherwise does not challenge the Receiver's authority in the Massey Tower Lien Action.
18. On November 1, 2021, the Receiver and MOD appeared before Associate Justice Wiebe and agreed on a litigation timetable which was formalized through an endorsement (the "Wiebe Endorsement"). A copy of the Wiebe Endorsement is attached as Appendix "PP". As part of the Wiebe Endorsement, the Receiver incurred significant costs on productions (i.e., an affidavit of documents), Scott Schedules and the preparation of expert evidence.
19. On February 3, 2022, the Receiver delivered a draft affidavit of documents to MOD, which contained 213 documents. The Receiver advised that the document was being delivered in draft because several new documents might need to be added. On February 15, 2022, counsel to MOD produced MOD's affidavit of documents. On February 18, 2022, the Receiver's counsel in the Massey Tower Lien Action advised MOD's counsel that MOD's affidavit of documents was deficient as it failed to include all relevant documents in support of MOD's allegations of delay; the Receiver provided a list of missing documentation. Attached hereto as Appendix "QQ" is a copy of an email from Len Finegold of Goldman Sloan Nash & Haber LLP, the Receiver's

lien litigation counsel, to Michael Farace dated February 18, 2022 setting out the deficiencies in MOD's affidavit of documents.

20. The Wiebe Endorsement required expert reports to be delivered by not later than April 29, 2022. Accordingly, the Receiver engaged Envista Forensics ("Envista"), an independent cost expert, to prepare an expert report. To date, the Receiver has paid Envista \$43,944.57, plus HST, for expert services rendered on the Massey Project.
21. On March 10, 2022, over three years after the Receiver filed its lien, MOD delivered a motion for leave to seek a dismissal of the Massey Tower Lien Action on the basis that the Receiver has no authority over 1428502 and had no right to commence the Massey Tower Lien Action. The Dismissal Motion was brought in the context of the lien proceeding and asks Associate Justice Wiebe, pursuant to a *Construction Act* judgment of reference, to determine the scope and extent of the Receiver's authority under the Receivership Order and the meaning of the term "Property" (as defined in the Receivership Order). The Receiver has already spent significant costs litigating the lien issue, including on Envista and legal counsel. A copy of the Dismissal Motion is attached as Appendix "RR".
22. Immediately upon receipt of the Dismissal Motion, the Receiver's counsel in the Massey Tower Lien Action requested a case conference, which was heard by the Honourable Justice Wilton-Siegel on March 9, 2022. At the case conference, the issue of the appropriate court for determination of the Receiver's jurisdiction was discussed, but Justice Wilton-Siegel indicated that he was not prepared to make a determination without a record and directed the parties to try to resolve the matter and return on March 28, 2022. A copy of His Honour's endorsement is attached as Appendix "SS". Subsequently, the Receiver's counsel in the Massey Tower Lien Action was advised that the matter would be heard by the Honourable Justice Cavanagh on March 28, 2022 at 10 AM.
23. On March 28, 2022, Justice Cavanagh issued an endorsement directing:
 

"The Receiver's motion for directions on the scope of the Receiver's authority and jurisdiction with respect to claims against MOD Developments (197 Yonge) Limited Partnership with respect to a Stipulated Price Contract between MOD and a division of 1428502 Ontario Limited is scheduled for a hearing on October 7, 2022 at 10:00 for 1/2 day."

A copy of Justice Cavanagh's endorsement is attached as Appendix "TT".
24. On June 8, 2022, the Receiver also commenced a separate proceeding for damages against MOD related to delays, productivity impacts and increased costs in relation to the Massey Project and payment of the Massey Holdback (the "Delay Action"). A copy of the Statement of Claim in the Delay Action is attached as Appendix "UU".
25. On July 12, 2022, MOD filed a Statement of Defence and Counterclaim in the Delay Action (the "MOD Delay Action Defence/Counterclaim") asserting that the Receiver has no standing to pursue the Massey Tower Lien Action since the counterparty to the Massey Tower Project Agreement is 1428502 and that the Receiver has no authority over this entity. In the MOD Delay Action Defence/Counterclaim, MOD asserts counterclaims against the Receiver in reliance on the terms of the Massey Tower Project Agreement, including for breach of contract. A copy of the MOD Delay Action Defence/Counterclaim is attached as Appendix "VV".

26. The Receiver has expended considerable resources to complete the Massey Project, with the goal of maximizing recoveries for the creditors of 1033803. It did so based on the terms of the Close-Out Agreement, from which MOD benefited and without which MOD would likely have incurred substantial delays completing the Project.
27. The Receiver has also incurred very significant professional costs addressing the issues raised by MOD with respect to the Receiver's authority to pursue the Massey Tower Lien Action (including costs drafting this Report and preparing for this motion), even though MOD was aware of these issues from at least December 21, 2018 and before the parties entered into the Close-out Agreement.
28. MOD benefited from the work performed by Forma-Con (both 1428508 and 1033803) and by the Receiver on behalf of 1033803 from the date of its appointment. From the Contract Date until December 31, 2016, 1428508 performed Forma-Con's obligations under the Massey Tower Project Agreement. From January 2017 to November 18, 2018, 1033803 performed Forma-Con's obligations under the Massey Tower Project Agreement. From November 19, 2018 until the completion of the Massey Project, the Receiver, on behalf of Forma-Con, arranged to have all of Forma-Con's obligations under the Massey Tower Project Agreement performed, as amended by the Close-out Agreement. MOD was well aware of the parties performing the services under the Massey Tower Project Agreement, and it paid for these services throughout, less the Holdback. It would be inequitable and highly prejudicial to the creditors of 1033803 if MOD were able to avoid its obligation to pay the Holdback under the Massey Tower Project Agreement due to a typographical error in the party named in the agreement, which was only asserted as an issue by MOD following completion of the Massey Project in the context of a receivership proceeding involving an impecunious estate.]
29. MOD has received the benefits of Forma-Con's performance of its obligations under the Massey Tower Project Agreement, regardless of the party performing the services. MOD has relied on the Massey Tower Project Agreement to assert counterclaims against the Receiver. It is clear from the billing and payment history that MOD at all times was dealing with Forma-Con Construction, whether, 1428508, 1033803 or the Receiver on behalf of 1033803, and should not be able to avoid its obligations under the Massey Tower Project Agreement by relying upon a clear typographical error in the name of a numbered company, 1428502, which did not even exist at the date of the Massey Tower Project Agreement. It is also clear that the assignment from 1428508 to 1033803 was brought to the attention of Tucker and MOD through communications concerning insurance on the Massey Project. MOD was at all times aware of the Forma-Con entities with which it was dealing.

## 2.6 Receiver's Recommendations

1. The Receiver recommends that this Court answer all of the Receiver's Questions affirmatively and issue an Order:
  - a. rectifying the Massey Tower Project Agreement by changing the name of the Forma-Con entity which is party to the contract to "Forma-Con Construction (a division of 1428508 Ontario Limited)";
  - b. declaring that the Massey Holdback is Property (as such term is defined in the Receivership Order) of 1033803;

- c. declaring that the Massey Tower Project Agreement was assigned at law or equity from 1428508 to 1033803;
  - d. in the alternative to (c), if the Massey Tower Project Agreement has not been assigned to 1033803, declaring that the Massey Tower Project Agreement is held in trust for 1033803;
  - e. declaring that MOD is estopped from asserting or claiming that current counterparty to the Massey Tower Project Agreement is either 1428502 or 1428508;
  - f. declaring that the Receiver is entitled to continue to pursue claims against MOD in the Massey Tower Lien Action and the Delay Action and defend any counterclaims brought by MOD in such actions; and
  - g. an order requiring MOD to pay the Receiver's costs of this motion, including its fees and the fees of its counsel.
2. The Receiver has incurred very significant costs related to the two prior scheduling hearings (where MOD challenged the jurisdiction of the Commercial List Court to address these issues) and in preparing for this motion and seeks its costs, including the costs of its counsel, of this motion.

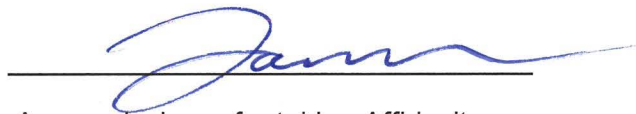
\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.,  
SOLELY IN ITS CAPACITY RECEIVER AND MANAGER OF  
10338083 ONTARIO INC AND 1087507 ONTARIO LIMITED  
AND NOT IN ITS PERSONAL CAPACITY**

This is Exhibit <sup>"</sup>13<sup>"</sup> referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



A commissioner for taking Affidavits

1428508 ONTARIO INC.  
(the "Corporation")

RESOLUTIONS OF THE SOLE SHAREHOLDER

**RESOLVED AS A SPECIAL RESOLUTION THAT:**

1. The property of the Corporation shall be distributed to the shareholder and any debts, obligations or liabilities shall be discharged, all effective on December 31, 2014.
2. Following the distribution of the property and the discharge of the liabilities, the Corporation be voluntarily dissolved pursuant to the provisions of subsection 237(a) of the *Business Corporations Act* (Ontario).
3. The entering into by the Corporation of a dissolution agreement (the "**Dissolution Agreement**"), substantially in the form of the draft agreement submitted to the shareholder, providing for the distribution of the Corporation's property to its shareholder, and the assumption by the shareholder of the Corporation's remaining debts and obligations, if any, all upon the terms and conditions set forth in the Dissolution Agreement, is authorized and approved.
4. Any officer of the Corporation is authorized and directed for and on behalf of the Corporation to negotiate, finalize, execute and deliver the Dissolution Agreement, with or without the corporate seal affixed, and with such additions, deletions or other changes as such officer may approve, such approval to be conclusively evidenced by such officer's execution and delivery of the Dissolution Agreement.
5. Any officer of the Corporation is authorized and directed to take any and all such further action and to negotiate, finalize, execute and deliver or to cause to be executed and delivered all such further documents, certificates, instruments, deeds and other instruments as such officer, in such officer's sole discretion, may deem desirable in order to give effect to these resolutions.
6. These resolutions may be executed by means of facsimile signature or portable document format (PDF), which when so executed and delivered shall be an original.

*[Signature page follows]*

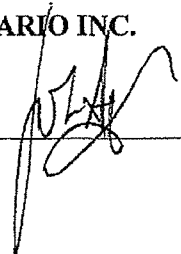
The foregoing resolutions are passed as evidenced by the signature of the shareholder of the Corporation pursuant to the provisions of the *Business Corporations Act* (Ontario).

**DATED** December 31 , ~~2013~~ 2014.

**1033803 ONTARIO INC.**

By: \_\_\_\_\_

Name:  
Title:

A handwritten signature in black ink, appearing to be 'J. L. H.', is written over a horizontal line. The signature is stylized and somewhat cursive.



This is Exhibit "14" referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



---

A commissioner for taking Affidavits



6. There are no proceedings pending in any court against the corporation.  
Aucune instance n'est en cours contre la société.
7. The corporation has obtained consent from the Minister of Revenue to the dissolution and has filed all notices and returns required under the *Corporations Information Act*.  
Le ministre du Revenu a approuvé la dissolution de la société. La société a déposé tous les avis et rapports requis par la *Loi sur les renseignements exigés des personnes morales*.

These articles are signed in duplicate.  
Les présents statuts sont signés en double exemplaire.

1428508 ONTARIO LIMITED

\_\_\_\_\_  
(Name of Corporation)  
(Dénomination sociale de la société)

By  
Par :

  
\_\_\_\_\_  
(Signature)  
(Signature)

\_\_\_\_\_  
President and Secretary  
(Description of Office)  
(Fonction)



Ministry of Finance  
33 King Street West  
PO Box 822  
Oshawa ON L1H 8H8



Ontario Corporations Tax Account No.	<b>7137774</b>
Federal Business No.	<b>863740692 RC 0001</b>
Ontario Corporation No.	<b>1428508</b>
Mailing Date	<b>May 20, 2016</b>

0000268

SONIA DAVIS  
OSLER, HOSKIN & HARCOURT LLP  
1 FIRST CANADIAN PLACE  
PO BOX 50  
TORONTO ON M5X 1B8

Re: 1428508 ONTARIO LIMITED

### Letter of Consent to Dissolve Corporation

The Minister of Finance is pleased to provide you with consent to dissolve the above named corporation, on the condition that within 60 days of the date of this letter, your Articles of Dissolution and the required fee are filed in the approved form and mailed to:

Ministry of Government Services (MGS)  
Central Production & Verification Services Branch  
393 University Avenue, Suite 200  
Toronto ON M5G 2M2

Failure to deliver this consent to the MGS within the specified period, will subject your corporation to further filing requirements under the *Corporations Tax Act*. Once your corporation has been formally dissolved through the MGS, your Ontario Corporations Tax Account No. will be closed.

For additional assistance, filing instructions and forms, please visit the [ontario.ca/serviceontario](http://ontario.ca/serviceontario) website and direct yourself as follows:

*Business/Online Services/Operate A Business/Exiting a Business/  
Services and Information for Exiting a Business - Closing a business/Articles of Dissolution - Form 10*

Alternatively, you may wish to contact the MGS at 416 314-8880 or toll free in Ontario at 1 800 361-3223.

#### Enquiries

1 800 959-9523 • TTY (Teletypewriter) 1 800 665-0354 • Ministry Website [ontario.ca/finance](http://ontario.ca/finance)

Osler, Hoskin & Harcourt LLP  
Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1G5  
416 597 2111 MAIN  
416 597 6666 FAX MAIN

Ref 19093171  
OSLER

Toronto  
Montreal  
Calgary  
Ottawa  
Vancouver  
New York

June 21, 2016

Sonia Davis  
Direct Dial: (416) 862-6528  
sdavis@osler.com  
Our M. Itel Number: 111440

**DELIVERED**

Ministry of Government and Consumer Services  
Suite 200  
393 University Avenue  
Toronto, ON M5G 2M2

**1428508 Ontario Limited (the "Corporation")  
Ontario Corporation No. 1428508**

Enclosed are the following documents to effect the voluntary dissolution of the Corporation under the *Business Corporations Act* (Ontario):

- 1. Articles of Dissolution, in duplicate;
- 2. Consent of the Ontario Corporations Tax Branch to voluntary dissolution; and
- 3. Our firm cheque in the amount of \$25.00 in payment of the filing fees.

Please provide the Certificate and Articles of Dissolution as soon as possible and date the Certificate and Articles of Dissolution effective June 21, 2016.

Please give me a call if you have any questions.

Yours very truly,

Sonia Davis  
Supervising Law Clerk  
SD/jf

Enclosures

This is Exhibit <sup>"15"</sup> 15 referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



A commissioner for taking Affidavits



# FORMA-CON CONSTRUCTION

(A DIVISION OF 1033803 ONTARIO INC.)

TUCKER  
 HI-RISE CONSTRUCTION INC.  
 JAN 20 2017  
 RECEIVED

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3ZA

Project: 15300  
 MASSEY TOWER

Date: Jan 20/17

Appl #: 16

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
	=====	
5. Total Progress	\$9,060,000.00	
6. Holdback	\$906,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$906,000.00	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$8,154,000.00	\$8,154,000.00
	-----	
10. Less line 9 from previous application	\$7,870,500.00	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$283,500.00	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$12,275,000.00
		=====
13. GST/HST BN # 13572 6081	\$36,855.00	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$320,355.00	
	=====	

TUCKER HIRISE  
 CONSTRUCTION INC.

COST CODE	PROJECT
ACCTNG	
PROJ. MGR.	
OWNER	

Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1428508 ONTARIO LIMITED / FORMA- CON CONSTRUCTION	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD Developments (197 Yonge) LP / Massey Tower	8 Price Street, Toronto, ON, M4W 3Z4, CAN	E200000AZJEM	24-Nov-2016 to 19-Feb-2017





# FORMA-CON CONSTRUCTION

(A DIVISION OF 1033803 ONTARIO INC.)



## APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
c/o TUCKER HIRISE CONSTRUCTION  
3755 VICTORIA PARK AVENUE  
TORONTO, ONTARIO M1W 3Z4

Project: 15300  
MASSEY TOWER

Date: Feb 17/17

Appl #: 17

Total

1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
	=====	
5. Total Progress	\$9,630,000.00	
6. Holdback	\$963,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$963,000.00	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$8,667,000.00	\$8,667,000.00
	-----	
10. Less line 9 from previous application	\$8,154,000.00	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$513,000.00	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$11,762,000.00
		=====
13. GST/HST BN # 135726081	\$66,690.00	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$579,690.00	
	=====	

**Clearance Certificate / Certificat de décharge**

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1428508 ONTARIO LIMITED / FORMA- CON CONSTRUCTION	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD Developments (197 Yonge) LP / Massey Tower	8 Price Street, Toronto, ON, M4W 3Z4, CAN	E200000AZJEM	24-Nov-2016 to 19-Feb-2017

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013



# FORMA-CON CONSTRUCTION

(A DIVISION OF 1033803 ONTARIO INC.)



**APPLICATION FOR PAYMENT**

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Mar 20/17

Appl #: 18

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
	=====	
5. Total Progress	\$10,350,000.00	
6. Holdback	\$1,035,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$1,035,000.00	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$9,315,000.00	\$9,315,000.00
	-----	
10. Less line 9 from previous application	\$8,667,000.00	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$648,000.00	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$11,114,000.00
		=====
13. GST/HST BN # 135726081	\$84,240.00	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$732,240.00	
	=====	

TUCKER HIRISE  
 CONSTRUCTION INC.

COST CODE	PROJECT
ACCTNG	
PROJ.MGR.	
OWNER	

**Clearance Certificate / Certificat de décharge**

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mmm-yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High-Rise) 4222-002: Form Work (Low-Rise)	MOD DEVELOPMENTS (197 YONGE) LP / MASSEY TOWER	8 PRICE STREET, TORONTO, ON, M4W 3Z4, CAN	E200000BOXZ6	27-Feb-2017 to 19-May-2017

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013



# FORMA-CON CONSTRUCTION

(A DIVISION OF 1033803 ONTARIO INC.)



APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Apr 20/17

Appl #: 19

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$11,080,000.00	
6. Holdback	\$1,108,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$1,108,000.00	
9. Total Progress Less Curr.Holdback (5-8)	\$9,972,000.00	\$9,972,000.00
10. Less line 9 from previous application	\$9,315,000.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$657,000.00	
12. Balance Unpaid Under Contract (4-9)		\$10,457,000.00
13. GST/HST BN # 135726081	\$85,410.00	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$742,410.00	

TUCKER HIRISE  
 CONSTRUCTION INC.

COST CODE	PROJECT
ACCTNG	
PROJ. MGR.	
OWNER	

**Clearance Certificate / Certificat de décharge**

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd- mmm-yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High-Rise) 4222-002: Form Work (Low-Rise)	MOD DEVELOPMENTS (197 YONGE) LP / MASSEY TOWER	8 PRICE STREET, TORONTO, ON, M4W 3Z4, CAN	E200000BOXZ6	27-Feb-2017 to 19- May-2017



# FORMA-CON CONSTRUCTION

( A DIVISION OF 1033803 ONTARIO INC.)

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013



APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: May 18/17

Appl #: 20

Total

1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$11,950,000.00	
6. Holdback	\$1,195,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$1,195,000.00	
9. Total Progress Less Curr.Holdback (5-8)	\$10,755,000.00	\$10,755,000.00
10. Less line 9 from previous application	\$9,972,000.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$783,000.00	
12. Balance Unpaid Under Contract (4-9)		\$9,674,000.00
13. GST/HST BN # 135726081	\$101,790.00	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$884,790.00	

TUCKER HIRISE  
 CONSTRUCTION INC.

COST CODE	PROJECT
ACCTNG	
PROJ MGR.	
OWNER	

Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mm-yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High-Rise) 4222-002: Form Work (Low-Rise)	MOD DEVELOPMENTS (197 YONGE) LP / MASSEY TOWER	8 PRICE STREET, TORONTO, ON, M4W 3Z4, CAN	E200000BOXZ6	27-Feb-2017 to 19-May-2017





# FORMA-CON CONSTRUCTION

(A DIVISION OF 1033803 ONTARIO INC.)

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013

**TUCKER**  
**HI-RISE CONSTRUCTION INC.**

**JUN 20 2017**

**RECEIVED**

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Jun 20/17

Appl #: 21

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
<hr style="border-top: 1px dashed black;"/>		
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
<hr style="border-top: 3px double black;"/>		
5. Total Progress	\$12,500,000.00	
6. Holdback	\$1,250,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$1,250,000.00	
<hr style="border-top: 1px dashed black;"/>		
9. Total Progress Less Curr.Holdback (5-8)	\$11,250,000.00	\$11,250,000.00
<hr style="border-top: 1px dashed black;"/>		
10. Less line 9 from previous application	\$10,755,000.00	
<hr style="border-top: 1px dashed black;"/>		
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$495,000.00	
<hr style="border-top: 3px double black;"/>		
12. Balance Unpaid Under Contract (4-9)		\$9,179,000.00
<hr style="border-top: 3px double black;"/>		
13. GST/HST BN # 135726081	\$64,350.00	
<hr style="border-top: 1px dashed black;"/>		
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$559,350.00	
<hr style="border-top: 3px double black;"/>		



## Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD DEVELOPMENTS (197 YONGE) LP / MASSEY TOWER	8 PRICE STREET, TORONTO, ON, M4W 3Z4, CAN	E200000CEBFI	25-May-2017 to 19-Aug-2017

MASTERS INSURANCE LIMITED  
7601 Keele Street, Suite # 400  
Concord, Ontario, L4K 1Y2  
Tel: # 905-739-4164, Fax # 905-739-5143

**MASTERS INSURANCE LIMITED**

PER *[Signature]*  
Claire Sturges  
(Authorized Representative)

At the office of:

CERTIFICATE OF INSURANCE - 17-16-028A

THIS IS TO CERTIFY TO: MOD Developments (197 Yonge) Limited Partnership  
 8 Price Street, 4th Floor  
 Toronto, Ontario  
 M4W 1Z4

that Policy(ies) of Insurance as herein described have been issued to the Insured named this date.

NAMED INSURED: Forma Con Construction  
 a Division of 1033803 Ontario Inc.  
 407 Basaltic Road,  
 Concord, Ontario  
 L4K 4W8

COVERAGE	INSURER & POLICY #	LIMIT	POLICY PERIOD
COMMERCIAL GENERAL LIABILITY (OCCURRENCE FORM) <i>(Applicable to Off Site Operations ONLY)</i> <i>(Wrap-Up Liability in effect for project noted herein)</i>	Northbridge General Insurance Corporation Policy #: CBC 0626497		January 1, 2017 to January 1, 2018
Each Occurrence Limit:		\$1,000,000	
General Aggregate Limit:		\$5,000,000	
Products and Completed Operations Aggregate Limit:		\$1,000,000	
Non-Owned Automobile Liability:		\$1,000,000	
Including:			
- Personal Injury, Broad Form Property Damage & Completed Operations			
- Blanket Contractual Liability, Contingent Employers Liability			
- Mould and Fungi, XCU Exclusion deleted			
- Rip & Tear-completed operations (\$500,000 per claim / aggregate)			
- Cross Liability / Severability of Interest Clause, Owners Contractors Protective			
- Contingent Wrap-up Liability (DID Included), Hook Liability, Tenants Legal Liability			
UMBRELLA LIABILITY - In excess of Underlying Commercial General Liability Limit - Policy # CBC 0626497	Northbridge General Insurance Corporation Policy #: CBC 0626497	\$19,000,000 Per occurrence	January 1, 2017 to January 1, 2018
THIRD PARTY AUTOMOBILE LIABILITY - Owned Vehicles	Northbridge General Insurance Corporation Policy #: CBC0822946	\$1,000,000	January 1, 2017 to January 1, 2018
UMBRELLA LIABILITY - In excess of Third Party Automobile Liability Limits - Policy # CBC 0622946	Northbridge General Insurance Corporation Policy #: CBC0622946	\$29,000,000 Per occurrence	January 1, 2017 to January 1, 2018
<b>TOTAL LIMIT OF LIABILITY (COMMERCIAL GENERAL LIABILITY)</b>		<b>\$20,000,000</b>	<b>Per Occurrence</b>
<b>TOTAL LIMIT OF LIABILITY (THIRD PARTY AUTOMOBILE LIABILITY)</b>		<b>\$30,000,000</b>	<b>Per Occurrence</b>

CONTRACTOR'S EQUIPMENT (Owned Schedule) Northbridge General Insurance Corporation Equipment Owned and/or Long Term Leased by Named Insured  
 - All Risk, subject to policy Terms, Exclusions and Deductibles Policy #: CBC 0626497 January 1, 2017 to January 1, 2018

- WAIVER OF SUBROGATION ON CONTRACTORS EQUIPMENT COVERAGE to be provided in favour of the Certificate Holder(s), but only when the partial or sole negligence of the Certificate Holder(s) is not the proximate cause of the loss or damage.


COVERING: Work usual to the operations of the Named Insured with respect to: Massey Tower - 179 Yonge Street, Toronto, Ontario

NOTE: It is agreed that MOD Developments (197 Yonge) Limited Partnership, Tucker Hi-Rise Construction Inc. is(are) added as Additional Insured(s) with respect to Commercial General Liability and Umbrella Liability and then only with respect to liability arising out of the operations of the Named Insured at the above noted project / location.

It is further agreed that MOD Developments (197 Yonge) Limited Partnership will be given 60 days prior written notice of cancellation with respect to Commercial General Liability and Umbrella Liability and 15 days with respect to Third Party Liability (Owned vehicles), except where Statutory Conditions apply.

This Certificate of Insurance does not in any way amend or alter the terms, conditions and exclusions of the policies mentioned above.

Dated at Concord, Ontario this: February 3, 2017

At the office of: MASTERS INSURANCE LIMITED  
 7501 Keele Street, Suite # 400  
 Concord, Ontario, L4K 1Y2  
 Tel: # 905-738-4164, Fax # 905-738-5143  
**MASTERS INSURANCE LIMITED**  
 PER   
 Claire Sturgeon  
 (Authorized Representative)



# FORMA-CON CONSTRUCTION

( A DIVISION OF 1033803 ONTARIO INC.)

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013



APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Jul 20/17

Appl #: 22

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
	=====	
5. Total Progress	\$13,500,000.00	
6. Holdback	\$1,350,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$1,350,000.00	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$12,150,000.00	\$12,150,000.00
	-----	
10. Less line 9 from previous application	\$11,250,000.00	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$900,000.00	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$8,279,000.00
		=====
13. GST/HST BN # 135726081	\$117,000.00	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$1,017,000.00	
	=====	


TUCKER HIRISE  
 CONSTRUCTION INC.

COST CODE	PROJECT
ACCTNG	
PROJ. MGR.	
OWNER	



## Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD DEVELOPMENTS (197 YONGE) LP / MASSEY TOWER	8 PRICE STREET, TORONTO, ON, M4W 3Z4, CAN	E200000CEBFI	25-May-2017 to 19-Aug-2017

1001 HURON ST. SUITE 1000  
CONCORD, ONTARIO, L4K 1Y2  
Tel: # 905-738-4164, Fax # 905-738-5143  
**MASTERS INSURANCE LIMITED**  
PER:   
Claire Sturgeon  
(Authorized Representative)

CERTIFICATE OF INSURANCE - 17-18-028A

THIS IS TO CERTIFY TO: MOD Developments (197 Yonge) Limited Partnership

8 Price Street, 4th Floor  
Toronto, Ontario  
M4W 1Z4

That Policy(ies) of Insurance as herein described have been issued to the Insured named this date.

NAMED INSURED: Forma Con Construction  
a Division of 1033803 Ontario Inc.  
407 Basaltic Road,  
Concord, Ontario  
L4K 4W8

COVERAGE	INSURER & POLICY #	LIMIT	POLICY PERIOD
COMMERCIAL GENERAL LIABILITY (OCCURRENCE FORM) <i>(Applicable to Off Site Operations ONLY)</i> <i>(Wrap-Up Liability in effect for project noted herein)</i>	Northbridge General Insurance Corporation Policy #: CBC 0626497		January 1, 2017 to January 1, 2018
Each Occurrence Limit:		\$1,000,000	
General Aggregate Limit:		\$5,000,000	
Products and Completed Operations Aggregate Limit:		\$1,000,000	
Non-Owned Automobile Liability:		\$1,000,000	
Including:			
- Personal Injury, Broad Form Property Damage & Completed Operations			
- Blanket Contractual Liability, Contingent Employers Liability			
- Mould and Fungi, XCU Exclusion deleted			
- Rip & Tear-completed operations (\$500,000 per claim / aggregate)			
- Cross Liability / Severability of Interest Clause, Owners Contractors Protective			
- Contingent Wrap-up Liability (DID included), Hook Liability, Tenants Legal Liability			
UMBRELLA LIABILITY	Northbridge General Insurance Corporation	\$19,000,000	January 1, 2017 to
- In excess of Underlying Commercial General Liability Limit - Policy # CBC 0626497	Policy #: CBC 0626497	Per occurrence	January 1, 2018
THIRD PARTY AUTOMOBILE LIABILITY	Northbridge General Insurance Corporation	\$1,000,000	January 1, 2017 to
- Owned Vehicles	Policy #: CBC0622946		January 1, 2018
UMBRELLA LIABILITY	Northbridge General Insurance Corporation	\$29,000,000	January 1, 2017 to
- In excess of Third Party Automobile Liability Limits - Policy # CBC 0622946	Policy #: CBC0622946	Per occurrence	January 1, 2018
<b>TOTAL LIMIT OF LIABILITY (COMMERCIAL GENERAL LIABILITY)</b>		<b>\$20,000,000</b>	<b>Per Occurrence</b>
<b>TOTAL LIMIT OF LIABILITY (THIRD PARTY AUTOMOBILE LIABILITY)</b>		<b>\$30,000,000</b>	<b>Per Occurrence</b>

CONTRACTOR'S EQUIPMENT (Owned Schedule) Northbridge General Insurance Corporation Equipment Owned and/or Long Term Leased by Named Insured  
- All Risk, subject to policy Terms, Exclusions and Deductibles Policy #: CBC 0626497  
January 1, 2017 to  
January 1, 2018

- WAIVER OF SUBROGATION ON CONTRACTORS EQUIPMENT COVERAGE to be provided in favour of the Certificate Holder(s), but only when the partial or sole negligence of the Certificate Holder(s) is not the proximate cause of the loss or damage.


COVERING: Work usual to the operations of the Named Insured with respect to: Massey Tower - 179 Yonge Street, Toronto, Ontario

NOTE: It is agreed that MOD Developments (197 Yonge) Limited Partnership, Tucker Hi-Rise Construction Inc. is(are) added as Additional Insured(s) with respect to Commercial General Liability and Umbrella Liability and then only with respect to liability arising out of the operations of the Named Insured at the above noted project / location.

It is further agreed that MOD Developments (197 Yonge) Limited Partnership will be given 60 days prior written notice of cancellation with respect to Commercial General Liability and Umbrella Liability and 15 days with respect to Third Party Liability (Owned vehicles), except where Statutory Conditions apply.

This Certificate of Insurance does not in any way amend or alter the terms, conditions and exclusions of the policies mentioned above.

Dated at Concord, Ontario this: February 3, 2017

At the office of: MASTERS INSURANCE LIMITED  
7501 Keele Street, Suite # 400  
Concord, Ontario, L4K 1Y2  
Tel: # 905-738-4164, Fax # 905-738-5143  
**MASTERS INSURANCE LIMITED**  
PER   
Claire Sturgeon  
(Authorized Representative)

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8



# FORMA-CON CONSTRUCTION

(A DIVISION OF 1033803 ONTARIO INC.)

Phone (905) 303-8010  
 Fax (905) 303-8013

**TUCKER**  
**HI-RISE CONSTRUCTION INC.**  
  
**AUG 21 2017**  
  
**RECEIVED**

**APPLICATION FOR PAYMENT**

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Aug 18/17

Appl #: 23

**Total**

1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$14,300,000.00	
6. Holdback	\$1,430,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$1,430,000.00	
9. Total Progress Less Curr.Holdback (5-8)	\$12,870,000.00	\$12,870,000.00
10. Less line 9 from previous application	\$12,150,000.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$720,000.00	
12. Balance Unpaid Under Contract (4-9)		\$7,559,000.00
13. GST/HST BN # 135726081	\$93,600.00	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$813,600.00	

TUCKER HIRISE  
 CONSTRUCTION INC.

COST CODE	PROJECT
ACCTNG	
PROJ. MGR.	
OWNER	



Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mm-yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High-Rise) 4222-002: Form Work (Low-Rise)	MOD DEVELOPMENTS (197 YONGE) LP / MASSEY TOWER	8 PRICE STREET, TORONTO, ON, M4W 3Z4, CAN	E200000CEBFI	25-May-2017 to 19-Aug-2017

**TUCKER**  
 HI-RISE CONSTRUCTION INC.  
 AUG 21 2017  
 RECEIVED

**MASTERS INSURANCE LIMITED**  
 PER: *[Signature]*  
 Claire Sturgeon  
 (Authorized Representative)



CERTIFICATE OF INSURANCE - 17-18-028A

THIS IS TO CERTIFY TO: MOD Developments (197 Yonge) Limited Partnership

8 Price Street, 4th Floor  
Toronto, Ontario  
M4W 1Z4

that Policy(ies) of Insurance as herein described have been issued to the Insured named this date.

NAMED INSURED: Forma Con Construction  
a Division of 1033803 Ontario Inc.  
407 Basaltic Road,  
Concord, Ontario  
L4K 4W8

COVERAGE	INSURER & POLICY #	LIMIT	POLICY PERIOD
<b>COMMERCIAL GENERAL LIABILITY (OCCURRENCE FORM)</b> <i>(Applicable to Off Site Operations ONLY)</i> <i>(Wrap-Up Liability in effect for project noted herein)</i>	Northbridge General Insurance Corporation Policy #: CBC 0626497		January 1, 2017 to January 1, 2018
Each Occurrence Limit:		\$1,000,000	
General Aggregate Limit:		\$5,000,000	
Products and Completed Operations Aggregate Limit:		\$1,000,000	
Non-Owned Automobile Liability:		\$1,000,000	
Including:			
- Personal Injury, Broad Form Property Damage & Completed Operations			
- Blanket Contractual Liability, Contingent Employers Liability			
- Mould and Fungi, XCU Exclusion deleted			
- Rip & Tear-completed operations (\$500,000 per claim / aggregate)			
- Cross Liability / Severability of Interest Clause, Owners Contractors Protective			
- Contingent Wrap-up Liability (DID Included), Hook Liability, Tenants Legal Liability			
<b>UMBRELLA LIABILITY</b> - In excess of Underlying Commercial General Liability Limit - Policy # CBC 0626497	Northbridge General Insurance Corporation Policy #: CBC 0926407	\$19,000,000 Per occurrence	January 1, 2017 to January 1, 2018
<b>THIRD PARTY AUTOMOBILE LIABILITY</b> - Owned Vehicles	Northbridge General Insurance Corporation Policy #: CBC0622946	\$1,000,000	January 1, 2017 to January 1, 2018
<b>UMBRELLA LIABILITY</b> - In excess of Third Party Automobile Liability Limits - Policy # CBC 0622946	Northbridge General Insurance Corporation Policy #: CBC0622946	\$29,000,000 Per occurrence	January 1, 2017 to January 1, 2018
<b>TOTAL LIMIT OF LIABILITY (COMMERCIAL GENERAL LIABILITY)</b>		<b>\$20,000,000</b>	Per Occurrence
<b>TOTAL LIMIT OF LIABILITY (THIRD PARTY AUTOMOBILE LIABILITY)</b>		<b>\$30,000,000</b>	Per Occurrence

**CONTRACTOR'S EQUIPMENT (Owned Schedule)** Northbridge General Insurance Corporation  
 - All Risk, subject to policy Terms, Exclusions and Deductibles Policy #: CBC 0626497 Equipment Owned and/or Long Term Leased by Named Insured  
 January 1, 2017 to  
 January 1, 2018

- WAIVER OF SUBROGATION ON CONTRACTORS EQUIPMENT COVERAGE to be provided in favour of the Certificate Holder(s), but only when the partial or sole negligence of the Certificate Holder(s) is not the proximate cause of the loss or damage.

COVERING: Work usual to the operations of the Named Insured with respect to: Massey Tower - 179 Yonge Street, Toronto, Ontario

NOTE: It is agreed that MOD Developments (197 Yonge) Limited Partnership, Tucker Hi-Rise Construction Inc. is(are) added as Additional Insured(s) with respect to Commercial General Liability and Umbrella Liability and then only with respect to liability arising out of the operations of the Named Insured at the above noted project / location.

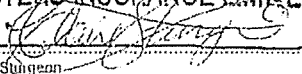
It is further agreed that MOD Developments (197 Yonge) Limited Partnership will be given 60 days prior written notice of cancellation with respect to Commercial General Liability and Umbrella Liability and 15 days with respect to Third Party Liability (Owned vehicles), except where Statutory Conditions apply.

This Certificate of Insurance does not in any way amend or alter the terms, conditions and exclusions of the policies mentioned above.

Dated at Concord, Ontario this: February 3, 2017

At the office of: MASTERS INSURANCE LIMITED  
 7501 Keele Street, Suite # 400  
 Concord, Ontario, L4K 1Y2  
 Tel: # 905-738-4164, Fax # 905-738-5143

**MASTERS INSURANCE LIMITED**

PER   
 Claire Sturgeon  
 (Authorized Representative)

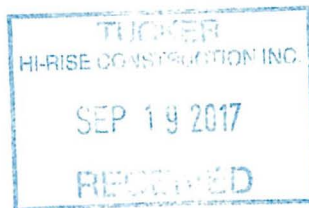
407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013



# FORMA-CON CONSTRUCTION

(A DIVISION OF 1033803 ONTARIO INC.)



APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Sep 19/17

Appl #: 24

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
	=====	
5. Total Progress	\$15,100,000.00	
6. Holdback	\$1,510,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$1,510,000.00	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$13,590,000.00	\$13,590,000.00
	-----	
10. Less line 9 from previous application	\$12,870,000.00	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$720,000.00	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$6,839,000.00
		=====
13. GST/HST BN # 135726081	\$93,600.00	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$813,600.00	
	=====	

TUCKER HIRISE  
 CONSTRUCTION INC.

COST CODE	PROJECT
ACCTNG	
PROJ.MGR.	
OWNER	



## Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD DEVELOPMENTS (197 YONGE) LP / MASSEY TOWER	8 PRICE STREET, TORONTO, ON, M4W 3Z4, CAN	E200000CKUG C	20-Aug-2017 to 19-Feb-2018

MASTERS INSURANCE LIMITED

PER

Clare Sturgis

(Authorized Representative)

CERTIFICATE OF INSURANCE - 17-18-028A

THIS IS TO CERTIFY TO: MOD Developments (197 Yonge) Limited Partnership  
 8 Price Street, 4th Floor  
 Toronto, Ontario  
 M4W 1Z4

that Policy(ies) of Insurance as herein described have been issued to the Insured named this date.

NAMED INSURED: Forma Con Construction  
 a Division of 1033803 Ontario Inc.  
 407 Basallic Road,  
 Concord, Ontario  
 L4K 4W8

COVERAGE	INSURER & POLICY #	LIMIT	POLICY PERIOD
COMMERCIAL GENERAL LIABILITY (OCCURRENCE FORM) <i>(Applicable to Off Site Operations ONLY)</i> <i>(Wrap-Up Liability in effect for project noted herein)</i>	Northbridge General Insurance Corporation Policy #: CBC 0626497		January 1, 2017 to January 1, 2018
Each Occurrence Limit:		\$1,000,000	
General Aggregate Limit:		\$5,000,000	
Products and Completed Operations Aggregate Limit:		\$4,000,000	
Non-Owned Automobile Liability:		\$1,000,000	
Including:			
- Personal Injury, Broad Form Property Damage & Completed Operations			
- Blanket Contractual Liability, Contingent Employers Liability			
- Mould and Fungi, XCU Exclusion deleted			
- Rip & Tear-completed operations (\$500,000 per claim / aggregate)			
- Cross Liability / Severability of Interest Clause, Owners Contractors Protective			
- Contingent Wrap-up Liability (DID Included), Hook Liability, Tenants Legal Liability			
UMBRELLA LIABILITY	Northbridge General Insurance Corporation Policy #: CBC 0626497	\$19,000,000 Per occurrence	January 1, 2017 to January 1, 2018
- In excess of Underlying Commercial General Liability Limit - Policy # CBC 0626497			
THIRD PARTY AUTOMOBILE LIABILITY	Northbridge General Insurance Corporation Policy #: CBC0822946	\$1,000,000	January 1, 2017 to January 1, 2018
- Owned Vehicles			
UMBRELLA LIABILITY	Northbridge General Insurance Corporation Policy #: CBC0622946	\$20,000,000 Per occurrence	January 1, 2017 to January 1, 2018
- In excess of Third Party Automobile Liability Limits - Policy # CBC 0622946			
<b>TOTAL LIMIT OF LIABILITY (COMMERCIAL GENERAL LIABILITY)</b>		<b>\$20,000,000</b>	<b>Per Occurrence</b>
<b>TOTAL LIMIT OF LIABILITY (THIRD PARTY AUTOMOBILE LIABILITY)</b>		<b>\$30,000,000</b>	<b>Per Occurrence</b>

CONTRACTOR'S EQUIPMENT (Owned Schedule) Northbridge General Insurance Corporation  
 - All Risk, subject to policy Terms, Exclusions and Deductibles Policy #: CBC 0626497  
 Equipment Owned and/or Long Term Leased by Named Insured  
 January 1, 2017 to  
 January 1, 2018

- WAIVER OF SUBROGATION ON CONTRACTORS EQUIPMENT COVERAGE to be provided in favour of the Certificate Holder(s), but only when the partial or sole negligence of the Certificate Holder(s) is not the proximate cause of the loss or damage.

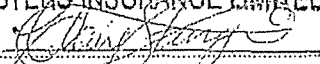
COVERING: Work usual to the operations of the Named Insured with respect to: Massey Tower - 179 Yonge Street, Toronto, Ontario

NOTE: It is agreed that MOD Developments (197 Yonge) Limited Partnership, Tucker Hi-Rise Construction Inc. is(are) added as Additional Insured(s) with respect to Commercial General Liability and Umbrella Liability and then only with respect to liability arising out of the operations of the Named Insured at the above noted project / location.

It is further agreed that MOD Developments (197 Yonge) Limited Partnership will be given 60 days prior written notice of cancellation with respect to Commercial General Liability and Umbrella Liability and 15 days with respect to Third Party Liability (Owned vehicles), except where Statutory Conditions apply.

This Certificate of Insurance does not in any way amend or alter the terms, conditions and exclusions of the policies mentioned above.

Dated at Concord, Ontario this: February 3, 2017

At the office of: MASTERS INSURANCE LIMITED  
 7501 Keele Street, Suite # 400  
 Concord, Ontario, L4K 1Y2  
 Tel: # 905-730-4164, Fax # 905-730-5143  
**MASTERS INSURANCE LIMITED**  
 PER   
 Claire Sturgeon  
 (Authorized Representative)

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8



# FORMA-CON CONSTRUCTION

(A DIVISION OF 1033803 ONTARIO INC.)

Phone (905) 303-8010  
 Fax (905) 303-8013



APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Oct 20/17

Appl #: 25

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
	=====	
5. Total Progress	\$15,900,000.00	
6. Holdback	\$1,590,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$1,590,000.00	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$14,310,000.00	\$14,310,000.00
	-----	
10. Less line 9 from previous application	\$13,590,000.00	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$720,000.00	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$6,119,000.00
		=====
13. GST/HST BN # 135726081	\$93,600.00	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$813,600.00	
	=====	

TUCKER HIRISE  
 CONSTRUCTION INC.

COST CODE	PROJECT
ACCTNG	
PROJ. MGR.	
OWNER	

Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD DEVELOPMENTS (197 YONGE) LP / MASSEY TOWER	8 PRICE STREET, TORONTO, ON, M4W 3Z4, CAN	E200000CKUG C	20-Aug-2017 to 19-Feb-2018

CERTIFICATE OF INSURANCE - 17-18-039A

THIS IS TO CERTIFY TO: 454 Yonge Limited Partnership and 454 Yonge GP Inc.

1 First Canadian Place, Suite 3400  
Toronto, Ontario  
M5X 1A4

that Policy(ies) of Insurance as herein described have been issued to the Insured named this date.

**NAMED INSURED:** Forma Con Construction  
a Division of 1033803 Ontario Inc.  
  
407 Basaltic Road,  
Concord, Ontario  
L4K 4W8

COVERAGE	INSURER & POLICY #	LIMIT	POLICY PERIOD
<b>COMMERCIAL GENERAL LIABILITY (OCCURRENCE FORM)</b> <i>( Applicable to Off Site Operations ONLY )</i> <i>( Wrap-Up Liability in effect for project noted herein )</i>	Northbridge General Insurance Corporation Policy #: CBC 0626497		January 1, 2017 to January 1, 2018
Each Occurrence Limit: General Aggregate Limit: Products and Completed Operations Aggregate Limit: Non-Owned Automobile Liability: Including: - Personal Injury, Broad Form Property Damage & Completed Operations - Blanket Contractual Liability, Contingent Employers Liability - Mould and Fungi, XCU Exclusion deleted - Rip & Tear-completed operations (\$500,000 per claim / aggregate) - Cross Liability / Severability of Interest Clause, Owners Contractors Protective - Contingent Wrap-up Liability (DID included), Hook Liability, Tenants Legal Liability		\$1,000,000 \$5,000,000 \$1,000,000 \$1,000,000	
<b>UMBRELLA LIABILITY</b> - In excess of Underlying Commercial General Liability Limit - Policy # CBC 0626497	Northbridge General Insurance Corporation Policy #: CBC 0626497	\$19,000,000 Per occurrence	January 1, 2017 to January 1, 2018
<b>THIRD PARTY AUTOMOBILE LIABILITY</b> - Owned Vehicles	Northbridge General Insurance Corporation Policy #: CBC0622946	\$1,000,000	January 1, 2017 to January 1, 2018
<b>UMBRELLA LIABILITY</b> - In excess of Third Party Automobile Liability Limits - Policy # CBC 0622946	Northbridge General Insurance Corporation Policy #: CBC0622946	\$29,000,000 Per occurrence	January 1, 2017 to January 1, 2018
<b>TOTAL LIMIT OF LIABILITY (COMMERCIAL GENERAL LIABILITY)</b>		<b>\$20,000,000</b>	<b>Per Occurrence</b>
<b>TOTAL LIMIT OF LIABILITY (THIRD PARTY AUTOMOBILE LIABILITY)</b>		<b>\$30,000,000</b>	<b>Per Occurrence</b>

**CONTRACTOR'S EQUIPMENT (Owned Schedule)** - All Risk, subject to policy Terms, Exclusions and Deductibles  
 Northbridge General Insurance Corporation  
 Policy #: CBC 0626497  
 Equipment Owned and/or Long Term Leased by Named Insured  
 January 1, 2017 to January 1, 2018


**COVERING:** Work usual to the operations of the Named Insured with respect to: YC Condo - Toronto, Ontario

**NOTE:** It is agreed that 454 Yonge Limited Partnership and 454 Yonge GP Inc., Canderel Development Management Inc., 4540972 Canada Inc. Reliance Construction Toronto, and The Lenders is(are) added as Additional Insured(s) with respect to Commercial General Liability and Umbrella Liability and then only with respect to liability arising out of the operations of the Named Insured at the above noted project location.

It is further agreed that 454 Yonge Limited Partnership and 454 Yonge GP Inc. will be given 60 days prior written notice of cancellation with respect to Commercial General Liability and Umbrella Liability and 15 days with respect to Third Party Liability (Owned vehicles), except where Statutory Conditions apply.

This Certificate of Insurance does not in any way amend or alter the terms, conditions and exclusions of the policies mentioned above.

Dated at Concord, Ontario this: February 3, 2017

At the office of: **MASTERS INSURANCE LIMITED**  
 7501 Keele Street, Suite # 400  
 Concord, Ontario, L4K 1Y2  
 Tel: # 905-738-4164, Fax # 905-738-5143  
**MASTERS INSURANCE LIMITED**  
 PER   
 Claire Sturgenn  
 (Authorized Representative)

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013



# FORMA-CON CONSTRUCTION

( A DIVISION OF 1033803 ONTARIO INC.)



APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Nov 30/17

Appl #: 26

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
	=====	
5. Total Progress	\$16,700,000.00	
6. Holdback	\$1,670,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$1,670,000.00	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$15,030,000.00	\$15,030,000.00
	-----	
10. Less line 9 from previous application	\$14,310,000.00	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$720,000.00	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$5,399,000.00
		=====
13. GST/HST BN # 135726081	\$93,600.00	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$813,600.00	
	=====	

TUCKER HIRISE  
 CONSTRUCTION INC.

COST CODE	PROJECT
ACCTNG	
PROJ. MGR.	
OWNER	



## Clearance Certificate / Certificat de décharge



Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD DEVELOPMENTS (197 YONGE) LP / MASSEY TOWER	8 PRICE STREET, TORONTO, ON, M4W 3Z4, CAN	E200000CKUG C	20-Aug-2017 to 19-Feb-2018

CERTIFICATE OF INSURANCE - 17-18-028A

THIS IS TO CERTIFY TO: MOD Developments (197 Yonge) Limited Partnership  
 8 Price Street, 4th Floor  
 Toronto, Ontario  
 M4W 1Z4

that Policy(ies) of Insurance as herein described have been issued to the Insured named this date.

NAMED INSURED: Forma Con Construction  
 a Division of 1033803 Ontario Inc.  
 407 Basaltic Road,  
 Concord, Ontario  
 L4K 4W8

COVERAGE	INSURER & POLICY #	LIMIT	POLICY PERIOD
COMMERCIAL GENERAL LIABILITY (OCCURRENCE FORM) ( <i>Applicable to Off Site Operations ONLY</i> ) ( <i>Wrap-Up Liability in effect for project noted herein</i> )	Northbridge General Insurance Corporation Policy #: CBC 0626497		January 1, 2017 to January 1, 2018
Each Occurrence Limit:		\$1,000,000	
General Aggregate Limit:		\$5,000,000	
Products and Completed Operations Aggregate Limit:		\$1,000,000	
Non-Owned Automobile Liability:		\$1,000,000	
Including:			
- Personal Injury, Broad Form Property Damage & Completed Operations			
- Blanket Contractual Liability, Contingent Employers Liability			
- Mould and Fungi, XCU Exclusion deleted			
- Rip & Tear-completed operations (\$500,000 per claim / aggregate)			
- Cross Liability / Severability of Interest Clause, Owners Contractors Protective			
- Contingent Wrap-up Liability (DID included), Hook Liability, Tenants Legal Liability			
UMBRELLA LIABILITY	Northbridge General Insurance Corporation Policy #: CBC 0626497	\$19,000,000 Per occurrence	January 1, 2017 to January 1, 2018
- In excess of Underlying Commercial General Liability Limit - Policy # CBC 0626497			
THIRD PARTY AUTOMOBILE LIABILITY	Northbridge General Insurance Corporation Policy #: CBC0622946	\$1,000,000	January 1, 2017 to January 1, 2018
- Owned Vehicles			
UMBRELLA LIABILITY	Northbridge General Insurance Corporation Policy #: CBC0622946	\$29,000,000 Per occurrence	January 1, 2017 to January 1, 2018
- In excess of Third Party Automobile Liability Limits - Policy # CBC 0622946			
<b>TOTAL LIMIT OF LIABILITY (COMMERCIAL GENERAL LIABILITY)</b>		<b>\$20,000,000</b>	<i>Per Occurrence</i>
<b>TOTAL LIMIT OF LIABILITY (THIRD PARTY AUTOMOBILE LIABILITY)</b>		<b>\$30,000,000</b>	<i>Per Occurrence</i>

CONTRACTOR'S EQUIPMENT (Owned Schedule) Northbridge General Insurance Corporation Equipment Owned and/or Long Term Leased by Named Insured  
 - All Risk, subject to policy Terms, Exclusions and Deductibles Policy #: CBC 0626497 January 1, 2017 to January 1, 2018

- WAIVER OF SUBROGATION ON CONTRACTORS EQUIPMENT COVERAGE to be provided in favour of the Certificate Holder(s), but only when the partial or sole negligence of the Certificate Holder(s) is not the proximate cause of the loss or damage.

COVERING: Work usual to the operations of the Named Insured with respect to: Massey Tower - 179 Yonge Street, Toronto, Ontario

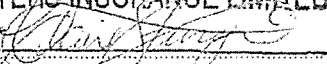
NOTE: It is agreed that MOD Developments (197 Yonge) Limited Partnership, Tucker Hi-Rise Construction Inc. is(are) added as Additional Insured(s) with respect to Commercial General Liability and Umbrella Liability and then only with respect to liability arising out of the operations of the Named Insured at the above noted project / location.

It is further agreed that MOD Developments (197 Yonge) Limited Partnership will be given 60 days prior written notice of cancellation with respect to Commercial General Liability and Umbrella Liability and 15 days with respect to Third Party Liability (Owned vehicles), except where Statutory Conditions apply.

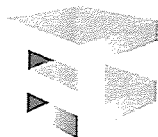
This Certificate of Insurance does not in any way amend or alter the terms, conditions and exclusions of the policies mentioned above.

Dated at Concord, Ontario this: February 3, 2017

At the office of: MASTERS INSURANCE LIMITED  
 7501 Keele Street, Suite # 400  
 Concord, Ontario, L4K 1Y2  
 Tel: # 905-738-4164, Fax # 905-738-5143

MASTERS INSURANCE LIMITED  
 PER   
 Claire Sturgeon  
 (Authorized Representative)

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8



# FORMA-CON CONSTRUCTION

(A DIVISION OF 1033803 ONTARIO INC.)

Phone (905) 303-8010  
 Fax (905) 303-8013

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Dec 31/17

Appl #: 27

Total

1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
	=====	
5. Total Progress	\$17,500,000.00	
6. Holdback	\$1,750,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$1,750,000.00	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$15,750,000.00	\$15,750,000.00
	-----	
10. Less line 9 from previous application	\$15,030,000.00	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$720,000.00	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$4,679,000.00
		=====
13. GST/HST BN # 135726081	\$93,600.00	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$813,600.00	
	=====	

TUCKER HIRISE  
 CONSTRUCTION INC.

COST CODE	PROJECT
ACCTNG	
PROD. DEPT.	
OWNER	



Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mm- yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD DEVELOPMENTS (197 YONGE) LP / MASSEY TOWER	8 PRICE STREET, TORONTO, ON, M4W 3Z4, CAN	E200000CKUG C	20-Aug-2017 to 19-Feb-2018

CERTIFICATE OF INSURANCE - 17-18-028A

THIS IS TO CERTIFY TO: MOD Developments (197 Yonge) Limited Partnership

8 Price Street, 4th Floor  
Toronto, Ontario  
M4W 1Z4

that Policy(ies) of insurance as herein described have been issued to the Insured named this date.

NAMED INSURED: Forma Con Construction  
a Division of 1033803 Ontario Inc.  
407 Basaltic Road,  
Concord, Ontario  
L4K 4W8

COVERAGE	INSURER & POLICY #	LIMIT	POLICY PERIOD
<b>COMMERCIAL GENERAL LIABILITY (OCCURRENCE FORM)</b> <i>(Applicable to Off Site Operations ONLY)</i> <i>(Wrap-Up Liability in effect for project noted herein)</i>	Northbridge General Insurance Corporation Policy #: CBC 0626497		January 1, 2017 to January 1, 2018
Each Occurrence Limit: \$1,000,000 General Aggregate Limit: \$5,000,000 Products and Completed Operations Aggregate Limit: \$1,000,000 Non-Owned Automobile Liability: \$1,000,000 Including: - Personal Injury, Broad Form Property Damage & Completed Operations - Blanket Contractual Liability, Contingent Employers Liability - Mold and Fungi, XCU Exclusion deleted - Rip & Tear-completed operations (\$500,000 per claim / aggregate) - Cross Liability / Severability of Interest Clause, Owners Contractors Protective - Contingent Wrap-up Liability (DID Included), Hook Liability, Tenants Legal Liability			
<b>UMBRELLA LIABILITY</b> - In excess of Underlying Commercial General Liability Limit - Policy # CBC 0626497	Northbridge General Insurance Corporation Policy #: CBC 0626497	\$19,000,000 Per occurrence	January 1, 2017 to January 1, 2018
<b>THIRD PARTY AUTOMOBILE LIABILITY</b> - Owned Vehicles	Northbridge General Insurance Corporation Policy #: CBC0622946	\$1,000,000	January 1, 2017 to January 1, 2018
<b>UMBRELLA LIABILITY</b> - In excess of Third Party Automobile Liability Limits - Policy # CBC 0622946	Northbridge General Insurance Corporation Policy #: CBC0622946	\$29,000,000 Per occurrence	January 1, 2017 to January 1, 2018
<b>TOTAL LIMIT OF LIABILITY (COMMERCIAL GENERAL LIABILITY)</b>		<b>\$20,000,000</b>	<b>Per Occurrence</b>
<b>TOTAL LIMIT OF LIABILITY (THIRD PARTY AUTOMOBILE LIABILITY)</b>		<b>\$30,000,000</b>	<b>Per Occurrence</b>

**CONTRACTOR'S EQUIPMENT (Owned Schedule)** Northbridge General Insurance Corporation  
 - All Risk, subject to policy Terms, Exclusions and Deductibles Policy #: CBC 0626497 Equipment Owned and/or Long Term Leased by Named Insured  
 January 1, 2017 to January 1, 2018

- WAIVER OF SUBROGATION ON CONTRACTORS EQUIPMENT COVERAGE to be provided in favour of the Certificate Holder(s), but only when the partial or sole negligence of the Certificate Holder(s) is not the proximate cause of the loss or damage.


COVERING: Work usual to the operations of the Named Insured with respect to: Massey Tower - 179 Yonge Street, Toronto, Ontario

NOTE: It is agreed that MOD Developments (197 Yonge) Limited Partnership, Tucker HI-Rise Construction Inc. is(are) added as Additional Insured(s) with respect to Commercial General Liability and Umbrella Liability and then only with respect to liability arising out of the operations of the Named Insured at the above noted project / location.

It is further agreed that MOD Developments (197 Yonge) Limited Partnership will be given 60 days prior written notice of cancellation with respect to Commercial General Liability and Umbrella Liability and 15 days with respect to Third Party Liability (Owned vehicles), except where Statutory Conditions apply.

This Certificate of Insurance does not in any way amend or alter the terms, conditions and exclusions of the policies mentioned above.

Dated at Concord, Ontario this: February 3, 2017

At the office of: **MASTERS INSURANCE LIMITED**  
 7501 Keele Street, Suite # 400  
 Concord, Ontario, L4K 1Y2  
 Tel: # 905-738-4164, Fax # 905-738-5143  
**MASTERS INSURANCE LIMITED**  
 PER   
 Claire Sturgeon  
 (Authorized Representative)



# FORMA-CON CONSTRUCTION

( A DIVISION OF 1033803 ONTARIO INC.)

HIRISE CONSTRUCTION INC  
 17 2019

Phone (905) 303-8010

Fax (905) 303-8013

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Jan 31/18

Appl #: 28

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$17,923,750.00	
6. Holdback	\$1,792,375.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$1,792,375.00	
9. Total Progress Less Curr.Holdback (5-8)	\$16,131,375.00	\$16,131,375.00
10. Less line 9 from previous application	\$15,750,000.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$381,375.00	
12. Balance Unpaid Under Contract (4-9)		\$4,297,625.00
13. GST/HST BN # 135726081	\$49,578.75	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$430,953.75	

TUCKER HIRISE  
 CONSTRUCTION INC.

GOST CODE	PROJECT
ACCT'G	
PROJ MGR.	
OWNER	

Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance Certificate Number / Numéro du certificat de décharge	Validity period (dd-mm- yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD DEVELOPMENTS (197 YONGE) LP / MASSEY TOWER	8 PRICE STREET, TORONTO, ON, M4W 3Z4, CAN	E200000CKUG C	20-Aug-2017 to 19-Feb-2018

RECEIVED  
JAN 23 2013

CERTIFICATE OF INSURANCE - 18-19-026

THIS IS TO CERTIFY TO: MOD Developments (197 Yonge) Limited Partnership  
 8 Price Street, 4th Floor  
 Toronto, Ontario  
 M4W 1Z4

that Policy(ies) of Insurance as herein described have been issued to the Insured named this date.

NAMED INSURED: Forma Con Construction  
 a Division of 1033803 Ontario Inc.  
 407 Basaltic Road,  
 Concord, Ontario  
 L4K 4W8

COVERAGE	INSURER & POLICY #	LIMIT	POLICY PERIOD
COMMERCIAL GENERAL LIABILITY (OCCURRENCE FORM) <i>( Applicable to Off Site Operations ONLY )</i> <i>( Wrap-Up Liability in effect for project noted herein )</i>	Northbridge General Insurance Corporation Policy #: CBC 0626497		January 1, 2018 to January 1, 2019
Each Occurrence Limit:		\$1,000,000	
General Aggregate Limit:		\$5,000,000	
Products and Completed Operations Aggregate Limit:		\$1,000,000	
Non-Owned Automobile Liability:		\$1,000,000	
Including:			
- Personal Injury, Broad Form Property Damage & Completed Operations			
- Blanket Contractual Liability, Contingent Employers Liability			
- Mould and Fungi, XCU Exclusion deleted			
- Rip & Tear-completed operations (\$500,000 per claim / aggregate)			
- Cross Liability / Severability of Interest Clause, Owners Contractors Protective			
- Contingent Wrap-up Liability (DID Included), Hook Liability, Tenants Legal Liability			
UMBRELLA LIABILITY	Northbridge General Insurance Corporation Policy #: CBC 0626497	\$29,000,000 Per occurrence	January 1, 2018 to January 1, 2019
- In excess of Underlying Commercial General Liability Limit - Policy # CBC 0626497			
THIRD PARTY AUTOMOBILE LIABILITY	Northbridge General Insurance Corporation Policy #: CBC0622946	\$1,000,000	January 1, 2018 to January 1, 2019
- Owned Vehicles			
UMBRELLA LIABILITY	Northbridge General Insurance Corporation Policy #: CBC0622946	\$29,000,000 Per occurrence	January 1, 2018 to January 1, 2019
- In excess of Third Party Automobile Liability Limits - Policy # CBC 0622946			
<b>TOTAL LIMIT OF LIABILITY (COMMERCIAL GENERAL LIABILITY)</b>		<b>\$30,000,000</b>	Per Occurrence
<b>TOTAL LIMIT OF LIABILITY (THIRD PARTY AUTOMOBILE LIABILITY)</b>		<b>\$30,000,000</b>	Per Occurrence

CONTRACTOR'S EQUIPMENT (Owned Schedule) Northbridge General Insurance Corporation Equipment Owned and/or Long Term Leased by Named Insured  
 - All Risk, subject to policy Terms, Exclusions and Deductibles Policy #: CBC 0626497 January 1, 2018 to January 1, 2019

WAIVER OF SUBROGATION ON CONTRACTORS EQUIPMENT COVERAGE to be provided in favour of the Certificate Holder(s), but only when the partial or sole negligence of the Certificate Holder(s) is not the proximate cause of the loss or damage.

COVERING: Work usual to the operations of the Named Insured with respect to: Massey Tower - 179 Yonge Street, Toronto, Ontario

NOTE: It is agreed that MOD Developments (197 Yonge) Limited Partnership, Tucker Hi-Rise Construction Inc. is(are) added as Additional Insured(s) with respect to Commercial General Liability and Umbrella Liability and then only with respect to liability arising out of the operations of the Named Insured at the above noted project / location.

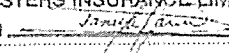
It is further agreed that MOD Developments (197 Yonge) Limited Partnership will be given 60 days prior written notice of cancellation with respect to Commercial General Liability and Umbrella Liability and 15 days with respect to Third Party Liability (Owned vehicles), except where Statutory Conditions apply.

This Certificate of Insurance does not in any way amend or alter the terms, conditions and exclusions of the policies mentioned above.

Dated at Concord, Ontario this: December 19, 2017

At the office of: MASTERS INSURANCE LIMITED  
 7501 Keele Street, Suite # 400  
 Concord, Ontario, L4K 1Y2  
 Tel: # 905-738-4164, Fax # 905-738-5143

MASTERS INSURANCE LIMITED

PER   
 Daniela Gereri  
 (Authorized Representative)



407 Basaltic Road  
Concord, Ontario  
L4K 4W8



# FORMA-CON CONSTRUCTION

( A DIVISION OF 1033803 ONTARIO INC. )

Phone (905) 303-8010

Fax (905) 303-8013

### APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
c/o TUCKER HIRISE CONSTRUCTION  
3755 VICTORIA PARK AVENUE  
TORONTO, ONTARIO M1W 3Z4

Project: 15300  
MASSEY TOWER

Date: Feb 28/18

Appl #: 29

Total

1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
5. Total Progress	\$18,492,500.00	
6. Holdback	\$1,849,250.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$1,849,250.00	
9. Total Progress Less Curr.Holdback (5-8)	\$16,643,250.00	\$16,643,250.00
10. Less line 9 from previous application	\$16,131,375.00	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$511,875.00	
12. Balance Unpaid Under Contract (4-9)		\$3,785,750.00
13. GST/HST BN # 135726081	\$66,543.75	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$578,418.75	

TUCKER HIRISE  
CONSTRUCTION INC.

COST CODE	PROJECT
3100	
ISSUE	
TRANSFER	AAJ
OWNER	

## Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance certificate number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD DEVELOPMENTS INC	8 PRICE ST, 4TH FLOOR, TORONTO, ON, M4W1Z4, CA	W200000DU3H 3	21-Feb-2018 to 21-Apr-2018

TICKETS  
 HIGHRISE CONSTRUCTION INC.  
 FEB 21 2018  
 10:00 AM

CERTIFICATE OF INSURANCE - 18-19-026

THIS IS TO CERTIFY TO: MOD Developments (197 Yonge) Limited Partnership  
 8 Price Street, 4th Floor  
 Toronto, Ontario  
 M4W 1Z4

that Policy(ies) of Insurance as herein described have been issued to the Insured named this date.

NAMED INSURED: Forma Con Construction  
 a Division of 1033803 Ontario Inc.  
 407 Basaltic Road,  
 Concord, Ontario  
 L4K 4W8

COVERAGE	INSURER & POLICY #	LIMIT	POLICY PERIOD
<b>COMMERCIAL GENERAL LIABILITY (OCCURRENCE FORM)</b> <i>(Applicable to Off Site Operations ONLY)</i> <i>(Wrap-Up Liability in effect for project noted herein)</i>	Northbridge General Insurance Corporation Policy #: CBC 0626497		January 1, 2018 to January 1, 2019
Each Occurrence Limit: <b>\$1,000,000</b> General Aggregate Limit: <b>\$5,000,000</b> Products and Completed Operations Aggregate Limit: <b>\$1,000,000</b> Non-Owned Automobile Liability: <b>\$1,000,000</b> Including: - Personal Injury, Broad Form Property Damage & Completed Operations - Blanket Contractual Liability, Contingent Employers Liability - Mould and Fungi, XCU Exclusion deleted - Rip & Tear-completed operations (\$500,000 per claim / aggregate) - Cross Liability / Severability of Interest Clause, Owners Contractors Protective - Contingent Wrap-up Liability (DID included), Hook Liability, Tenants Legal Liability			
<b>UMBRELLA LIABILITY</b> - In excess of Underlying Commercial General Liability Limit - Policy # CBC 0626497	Northbridge General Insurance Corporation Policy #: CBC 0626497	\$29,000,000 Per occurrence	January 1, 2018 to January 1, 2019
<b>THIRD PARTY AUTOMOBILE LIABILITY</b> - Owned Vehicles	Northbridge General Insurance Corporation Policy #: CBC0622946	\$1,000,000	January 1, 2018 to January 1, 2019
<b>UMBRELLA LIABILITY</b> - In excess of Third Party Automobile Liability Limits - Policy # CBC 0622946	Northbridge General Insurance Corporation Policy #: CBC0622946	\$29,000,000 Per occurrence	January 1, 2018 to January 1, 2019
<b>TOTAL LIMIT OF LIABILITY (COMMERCIAL GENERAL LIABILITY)</b>		<b>\$30,000,000</b>	Per Occurrence
<b>TOTAL LIMIT OF LIABILITY (THIRD PARTY AUTOMOBILE LIABILITY)</b>		<b>\$30,000,000</b>	Per Occurrence

**CONTRACTOR'S EQUIPMENT (Owned Schedule)** Northbridge General Insurance Corporation  
 - All Risk, subject to policy Terms, Exclusions and Deductibles Policy #: CBC 0626497  
 Equipment Owned and/or Long Term Leased by Named Insured

**WAIVER OF SUBROGATION ON CONTRACTORS EQUIPMENT COVERAGE** to be provided in favour of the Certificate Holder(s), but only when the partial or sole negligence of the Certificate Holder(s) is not the proximate cause of the loss or damage.

**COVERING:** Work usual to the operations of the Named Insured with respect to: Massey Tower - 179 Yonge Street, Toronto, Ontario

**NOTE:** It is agreed that MOD Developments (197 Yonge) Limited Partnership, Tucker Hi-Rise Construction Inc. is(are) added as Additional Insured(s) with respect to Commercial General Liability and Umbrella Liability and then only with respect to liability arising out of the operations of the Named Insured at the above noted project / location.

It is further agreed that MOD Developments (197 Yonge) Limited Partnership will be given 60 days prior written notice of cancellation with respect to Commercial General Liability and Umbrella Liability and 15 days with respect to Third Party Liability (Owned vehicles), except where Statutory Conditions apply.

This Certificate of Insurance does not in any way amend or alter the terms, conditions and exclusions of the policies mentioned above.

Dated at Concord, Ontario this:

December 19, 2017

At the office of:

**MASTERS INSURANCE LIMITED**  
 7501 Keele Street, Suite # 400  
 Concord, Ontario, L4K 1Y2  
 Tel: # 905-738-4164, Fax # 905-738-5143

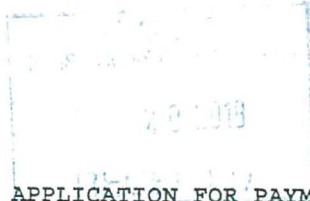
**MASTERS INSURANCE LIMITED**

PER [Signature]  
 Daniela Gareri  
 (Authorized Representative)



# FORMA-CON CONSTRUCTION

( A DIVISION OF 1428508 ONTARIO LIMITED )



**APPLICATION FOR PAYMENT**

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Mar 20/18

Appl #: 30

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
	=====	
5. Total Progress	\$19,130,000.00	
6. Holdback	\$1,913,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$1,913,000.00	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$17,217,000.00	\$17,217,000.00
	-----	
10. Less line 9 from previous application	\$16,643,250.00	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$573,750.00	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$3,212,000.00
		=====
13. GST/HST BN # 135726081	\$74,587.50	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$648,337.50	
	=====	

**TUCKER HIRISE  
 CONSTRUCTION INC.**

COST CODE	PROJECT
ACCTNG	
PROJ. MGR.	
OWNER	

Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance certificate number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD DEVELOPMENTS (197 YONGE) LP	8 price st, toronto , ON, CAN	W200000DUZY 4	23-Feb-2018 to 19-May-2018

CERTIFICATE OF INSURANCE - 18-19-026

**THIS IS TO CERTIFY TO:** MOD Developments (197 Yonge) Limited Partnership  
 8 Price Street, 4th Floor  
 Toronto, Ontario  
 M4W 1Z4

that Policy(ies) of Insurance as herein described have been issued to the Insured named this date.

**NAMED INSURED:** Forma Con Construction  
 a Division of 1033803 Ontario Inc.  
 407 Basaltic Road,  
 Concord, Ontario  
 L4K 4W3

COVERAGE	INSURER & POLICY #	LIMIT	POLICY PERIOD
<b>COMMERCIAL GENERAL LIABILITY (OCCURRENCE FORM)</b> <i>(Applicable to Off Site Operations ONLY)</i> <i>(Wrap-Up Liability in effect for project noted herein)</i>	Northbridge General Insurance Corporation Policy #: CBC 0626497		January 1, 2018 to January 1, 2019
Each Occurrence Limit: General Aggregate Limit: Products and Completed Operations Aggregate Limit: Non-Owned Automobile Liability: Including: - Personal Injury, Broad Form Property Damage & Completed Operations - Blanket Contractual Liability, Contingent Employers Liability - Mould and Fungi, XCU Exclusion deleted - Rip & Tear-completed operations (\$500,000 per claim / aggregate) - Cross Liability / Severability of Interest Clause, Owners Contractors Protective - Contingent Wrap-up Liability (DID included), Hook Liability, Tenants Legal Liability		\$1,000,000 \$5,000,000 \$1,000,000 \$1,000,000	
<b>UMBRELLA LIABILITY</b> - In excess of Underlying Commercial General Liability Limit - Policy # CBC 0626497	Northbridge General Insurance Corporation Policy #: CBC 0626497	\$29,000,000 Per occurrence	January 1, 2018 to January 1, 2019
<b>THIRD PARTY AUTOMOBILE LIABILITY</b> - Owned Vehicles	Northbridge General Insurance Corporation Policy #: CBC0622946	\$1,000,000	January 1, 2018 to January 1, 2019
<b>UMBRELLA LIABILITY</b> - In excess of Third Party Automobile Liability Limits - Policy # CBC 0622946	Northbridge General Insurance Corporation Policy #: CBC0622946	\$29,000,000 Per occurrence	January 1, 2018 to January 1, 2019
<b>TOTAL LIMIT OF LIABILITY (COMMERCIAL GENERAL LIABILITY)</b>		<b>\$30,000,000</b>	<b>Per Occurrence</b>
<b>TOTAL LIMIT OF LIABILITY (THIRD PARTY AUTOMOBILE LIABILITY)</b>		<b>\$30,000,000</b>	<b>Per Occurrence</b>

**CONTRACTOR'S EQUIPMENT (Owned Schedule)**  
 - All Risk, subject to policy Terms, Exclusions and Deductibles

Northbridge General Insurance Corporation  
 Policy #: CBC 0626497

Equipment Owned and/or Long Term Leased by Named Insured

January 1, 2018 to  
 January 1, 2019

**WAIVER OF SUBROGATION ON CONTRACTORS EQUIPMENT COVERAGE** to be provided in favour of the Certificate Holder(s), but only when the partial or sole negligence of the Certificate Holder(s) is not the proximate cause of the loss or damage.

**COVERING:** Work usual to the operations of the Named Insured with respect to: Massey Tower - 179 Yonge Street, Toronto, Ontario

**NOTE:** It is agreed that MOD Developments (197 Yonge) Limited Partnership, Tucker Hi-Rise Construction Inc. is(are) added as Additional Insured(s) with respect to Commercial General Liability and Umbrella Liability and then only with respect to liability arising out of the operations of the Named Insured at the above noted project / location.

It is further agreed that MOD Developments (197 Yonge) Limited Partnership will be given 60 days prior written notice of cancellation with respect to Commercial General Liability and Umbrella Liability and 15 days with respect to Third Party Liability (Owned vehicles), except where Statutory Conditions apply.

This Certificate of Insurance does not in any way amend or alter the terms, conditions and exclusions of the policies mentioned above.

Dated at Concord, Ontario this:

December 19, 2017

At the office of:

**MASTERS INSURANCE LIMITED**  
 7501 Keele Street, Suite # 400  
 Concord, Ontario, L4K 1Y2  
 Tel: # 905-738-4164, Fax # 905-738-5143

**MASTERS INSURANCE LIMITED**

PER   
 Daniela Gareri  
 (Authorized Representative)

407 Basaltic Road

Concord, Ontario

L4K 4W8

Phone (905) 303-8010

Fax (905) 303-8013



# FORMA-CON CONSTRUCTION

( A DIVISION OF 1033803 ONTARIO INC.)

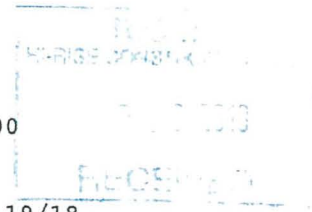
APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Apr 19/18

Appl #: 31



		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
	=====	
5. Total Progress	\$19,430,000.00	
6. Holdback	\$1,943,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$1,943,000.00	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$17,487,000.00	\$17,487,000.00
	-----	
10. Less line 9 from previous application	\$17,217,000.00	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$270,000.00	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$2,942,000.00
		=====
13. GST/HST BN # 135726081	\$35,100.00	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$305,100.00	
	=====	

TUCKER HIRISE  
 CONSTRUCTION INC.

COST CODE	PROJECT
ACCTNG	
PROJ. MGR.	
OWNER	

Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance certificate number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD DEVELOPMENTS (197 YONGE) LP	8 price st, toronto , ON, CAN	W200000DUZY 4	23-Feb-2018 to 19-May-2018



CERTIFICATE OF INSURANCE - 18-19-026

**THIS IS TO CERTIFY TO:** MOD Developments (197 Yonge) Limited Partnership  
 8 Price Street, 4th Floor  
 Toronto, Ontario  
 M4W 1Z4

that Policy(ies) of Insurance as herein described have been issued to the Insured named this date.

**NAMED INSURED:** Forma Con Construction  
 a Division of 1033803 Ontario Inc.  
 407 Basaltic Road,  
 Concord, Ontario  
 L4K 4W8

COVERAGE	INSURER & POLICY #	LIMIT	POLICY PERIOD
<b>COMMERCIAL GENERAL LIABILITY (OCCURRENCE FORM)</b> <i>(Applicable to Off Site Operations ONLY)</i> <i>(Wrap-Up Liability in effect for project noted herein)</i>	Northbridge General Insurance Corporation Policy #: CBC 0626497		January 1, 2018 to January 1, 2019
Each Occurrence Limit:		\$1,000,000	
General Aggregate Limit:		\$5,000,000	
Products and Completed Operations Aggregate Limit:		\$1,000,000	
Non-Owned Automobile Liability:		\$1,000,000	
Including:			
- Personal Injury, Broad Form Property Damage & Completed Operations			
- Blanket Contractual Liability, Contingent Employers Liability			
- Mould and Fungi, XCU Exclusion Deleted			
- Rip & Tear-completed operations (\$500,000 per claim / aggregate)			
- Cross Liability / Severability of Interest Clause, Owners Contractors Protective			
- Contingent Wrap-up Liability (D/D included), Hook Liability, Tenants Legal Liability			
<b>UMBRELLA LIABILITY</b>	Northbridge General Insurance Corporation	\$29,000,000	January 1, 2018 to
- In excess of Underlying Commercial General Liability Limit - Policy # CBC 0626497	Policy #: CBC 0626497	Per occurrence	January 1, 2019
<b>THIRD PARTY AUTOMOBILE LIABILITY</b>	Northbridge General Insurance Corporation	\$1,000,000	January 1, 2018 to
- Owned Vehicles	Policy #: CBC0622946		January 1, 2019
<b>UMBRELLA LIABILITY</b>	Northbridge General Insurance Corporation	\$29,000,000	January 1, 2018 to
- In excess of Third Party Automobile Liability Limits - Policy # CBC 0622946	Policy #: CBC0622946	Per occurrence	January 1, 2019
<b>TOTAL LIMIT OF LIABILITY (COMMERCIAL GENERAL LIABILITY)</b>		<b>\$30,000,000</b>	Per Occurrence
<b>TOTAL LIMIT OF LIABILITY (THIRD PARTY AUTOMOBILE LIABILITY)</b>		<b>\$30,000,000</b>	Per Occurrence

**CONTRACTOR'S EQUIPMENT (Owned Schedule)** Northbridge General Insurance Corporation  
 - All Risk, subject to policy Terms, Exclusions and Deductibles Policy #: CBC 0626497 Equipment Owned and/or Long Term Leased by Named Insured  
 January 1, 2018 to  
 January 1, 2019

**WAIVER OF SUBROGATION ON CONTRACTORS EQUIPMENT COVERAGE** to be provided in favour of the Certificate Holder(s), but only when the partial or sole negligence of the Certificate Holder(s) is not the proximate cause of the loss or damage.

**COVERING:** Work usual to the operations of the Named Insured with respect to: Massey Tower - 179 Yonge Street, Toronto, Ontario

**NOTE:** It is agreed that MOD Developments (197 Yonge) Limited Partnership, Tucker Hi-Rise Construction Inc. is(are) added as Additional Insured(s) with respect to Commercial General Liability and Umbrella Liability and then only with respect to liability arising out of the operations of the Named Insured at the above noted project / location.

It is further agreed that MOD Developments (197 Yonge) Limited Partnership will be given 60 days prior written notice of cancellation with respect to Commercial General Liability and Umbrella Liability and 15 days with respect to Third Party Liability (Owned vehicles), except where Statutory Conditions apply.

This Certificate of Insurance does not in any way amend or alter the terms, conditions and exclusions of the policies mentioned above.

Dated at Concord, Ontario this:

December 19, 2017

At the office of:

**MASTERS INSURANCE LIMITED**  
 7501 Keele Street, Suite # 400  
 Concord, Ontario, L4K 1Y2  
 Tel: # 905-738-4164, Fax # 905-738-5143

**MASTERS INSURANCE LIMITED**

PER *Daniela Gareri*  
 Daniela Gareri  
 (Authorized Representative)

309  
 407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8



# FORMA-CON CONSTRUCTION

(A DIVISION OF 1033803 ONTARIO INC.)



Phone (905) 303-8010  
 Fax (905) 303-8013

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: May 23/18

Appl #: 32

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
	=====	
5. Total Progress	\$19,730,000.00	
6. Holdback	\$1,973,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$1,973,000.00	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$17,757,000.00	\$17,757,000.00
	-----	
10. Less line 9 from previous application	\$17,487,000.00	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$270,000.00	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$2,672,000.00
		=====
13. GST/HST BN # 135726081	\$35,100.00	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$305,100.00	
	=====	

Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance certificate number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD DEVELOPMENTS (197 YONGE) LP	8 price st, toronto , ON, CAN	W200000EHS0 U	22-May-2018 to 20-Jul-2018

## CERTIFICATE OF INSURANCE - 18-19-026

THIS IS TO CERTIFY TO: MOD Developments (197 Yonge) Limited Partnership

8 Price Street, 4th Floor  
Toronto, Ontario  
M4W 1Z4

that Policy(ies) of Insurance as herein described have been issued to the Insured named this date.

NAMED INSURED: Forma Con Construction  
a Division of 1033803 Ontario Inc.  
407 Basaltic Road,  
Concord, Ontario  
L4K 4W8

COVERAGE	INSURER & POLICY #	LIMIT	POLICY PERIOD
<b>COMMERCIAL GENERAL LIABILITY (OCCURRENCE FORM)</b> <i>(Applicable to Off Site Operations ONLY)</i> <i>(Wrap-Up Liability in effect for project noted herein)</i>	Northbridge General Insurance Corporation Policy #: CBC 0626497		January 1, 2018 to January 1, 2019
Each Occurrence Limit:		\$1,000,000	
General Aggregate Limit:		\$5,000,000	
Products and Completed Operations Aggregate Limit:		\$1,000,000	
Non-Owned Automobile Liability:		\$1,000,000	
Including:			
- Personal Injury, Broad Form Property Damage & Completed Operations			
- Blanket Contractual Liability, Contingent Employers Liability			
- Mould and Fungi, XCU Exclusion deleted			
- Rip & Tear-completed operations (\$500,000 per claim / aggregate)			
- Cross Liability / Severability of Interest Clause, Owners Contractors Protective			
- Contingent Wrap-up Liability (DID included), Hook Liability, Tenants Legal Liability			
<b>UMBRELLA LIABILITY</b>	Northbridge General Insurance Corporation	\$29,000,000	January 1, 2018 to
- In excess of Underlying Commercial General Liability Limit - Policy # CBC 0626497	Policy #: CBC 0626497	Per occurrence	January 1, 2019
<b>THIRD PARTY AUTOMOBILE LIABILITY</b>	Northbridge General Insurance Corporation	\$1,000,000	January 1, 2018 to
- Owned Vehicles	Policy #: CBC0622946		January 1, 2019
<b>UMBRELLA LIABILITY</b>	Northbridge General Insurance Corporation	\$29,000,000	January 1, 2018 to
- In excess of Third Party Automobile Liability Limits - Policy # CBC 0622946	Policy #: CBC0622946	Per occurrence	January 1, 2019
<b>TOTAL LIMIT OF LIABILITY (COMMERCIAL GENERAL LIABILITY)</b>		<b>\$30,000,000</b>	Per Occurrence
<b>TOTAL LIMIT OF LIABILITY (THIRD PARTY AUTOMOBILE LIABILITY)</b>		<b>\$30,000,000</b>	Per Occurrence

<b>CONTRACTOR'S EQUIPMENT (Owned Schedule)</b>	Northbridge General Insurance Corporation	Equipment Owned and/or Long Term Leased by Named Insured	January 1, 2018 to
- All Risk, subject to policy Terms, Exclusions and Deductibles	Policy #: CBC 0626497		January 1, 2019

WAIVER OF SUBROGATION ON CONTRACTORS EQUIPMENT COVERAGE to be provided in favour of the Certificate Holder(s), but only when the partial or sole negligence of the Certificate Holder(s) is not the proximate cause of the loss or damage.

COVERING: Work usual to the operations of the Named Insured with respect to: Massey Tower - 179 Yonge Street, Toronto, Ontario

**NOTE:** It is agreed that MOD Developments (197 Yonge) Limited Partnership, Tucker Hi-Rise Construction Inc. is(are) added as Additional Insured(s) with respect to Commercial General Liability and Umbrella Liability and then only with respect to liability arising out of the operations of the Named Insured at the above noted project / location.

It is further agreed that MOD Developments (197 Yonge) Limited Partnership will be given 60 days prior written notice of cancellation with respect to Commercial General Liability and Umbrella Liability and 15 days with respect to Third Party Liability (Owned vehicles), except where Statutory Conditions apply.

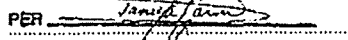
This Certificate of Insurance does not in any way amend or alter the terms, conditions and exclusions of the policies mentioned above.

Dated at Concord, Ontario this: December 19, 2017

At the office of:

MASTERS INSURANCE LIMITED  
7501 Keele Street, Suite # 400  
Concord, Ontario, L4K 1Y2  
Tel: # 905-738-4164, Fax # 905-738-5143

MASTERS INSURANCE LIMITED

PER   
Daniela Gerer  
(Authorized Representative)



# FORMA-CON CONSTRUCTION

( A DIVISION OF 1033803 ONTARIO INC.)

Phone (905) 303-8010

Fax (905) 303-8013

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Jun 30/18

Appl #: 33

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$0.00	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,429,000.00	\$20,429,000.00
	=====	
5. Total Progress	\$20,030,000.00	
6. Holdback	\$2,003,000.00	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$2,003,000.00	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$18,027,000.00	\$18,027,000.00
	-----	
10. Less line 9 from previous application	\$17,757,000.00	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$270,000.00	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$2,402,000.00
		=====
13. GST/HST BN # 135726081	\$35,100.00	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$305,100.00	
	=====	

TUCKER HIRISE  
 CONSTRUCTION INC.

COST CODE	PROJECT
ACCTMG	
PROJ. MGR.	
OWNER	

Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance certificate number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD DEVELOPMENTS (197 YONGE) LP	8 price st, toronto , ON, CAN	W200000EHS0 U	22-May-2018 to 20-Jul-2018

CERTIFICATE OF INSURANCE - 18-19-026

THIS IS TO CERTIFY TO: MOD Developments (197 Yonge) Limited Partnership

8 Price Street, 4th Floor  
Toronto, Ontario  
M4W 1Z4

that Policy(ies) of Insurance as herein described have been issued to the Insured named this date.

NAMED INSURED: Forma Con Construction  
a Division of 1033803 Ontario Inc.  
407 Basaltic Road,  
Concord, Ontario  
L4K 4W8

COVERAGE	INSURER & POLICY #	LIMIT	POLICY PERIOD
COMMERCIAL GENERAL LIABILITY (OCCURRENCE FORM) <i>( Applicable to Off Site Operations ONLY )</i> <i>( Wrap-Up Liability in effect for project noted herein )</i>	Northbridge General Insurance Corporation Policy #: CBC 0626497		January 1, 2018 to January 1, 2019
Each Occurrence Limit:		\$1,000,000	
General Aggregate Limit:		\$5,000,000	
Products and Completed Operations Aggregate Limit:		\$1,000,000	
Non-Owned Automobile Liability:		\$1,000,000	
Including:			
- Personal Injury, Broad Form Property Damage & Completed Operations			
- Blanket Contractual Liability, Contingent Employers Liability			
- Mould and Fungi, XCU Exclusion deleted			
- Rip & Tear-completed operations (\$500,000 per claim / aggregate)			
- Cross Liability / Severability of Interest Clause, Owners Contractors Protective			
- Contingent Wrap-up Liability (DID Included), Hook Liability, Tenants Legal Liability			
UMBRELLA LIABILITY - In excess of Underlying Commercial General Liability Limit - Policy # CBC 0626497	Northbridge General Insurance Corporation Policy #: CBC 0626497	\$29,000,000 Per occurrence	January 1, 2018 to January 1, 2019
THIRD PARTY AUTOMOBILE LIABILITY - Owned Vehicles	Northbridge General Insurance Corporation Policy #: CBC0622946	\$1,000,000	January 1, 2018 to January 1, 2019
UMBRELLA LIABILITY - In excess of Third Party Automobile Liability Limits - Policy # CBC 0622946	Northbridge General Insurance Corporation Policy #: CBC0622946	\$29,000,000 Per occurrence	January 1, 2018 to January 1, 2019
<b>TOTAL LIMIT OF LIABILITY (COMMERCIAL GENERAL LIABILITY)</b>		<b>\$30,000,000</b>	<b>Per Occurrence</b>
<b>TOTAL LIMIT OF LIABILITY (THIRD PARTY AUTOMOBILE LIABILITY)</b>		<b>\$30,000,000</b>	<b>Per Occurrence</b>

CONTRACTOR'S EQUIPMENT (Owned Schedule) Northbridge General Insurance Corporation Equipment Owned and/or Long Term Leased by Named Insured  
- All Risk, subject to policy Terms, Exclusions and Deductibles  
Policy #: CBC 0626497  
January 1, 2018 to  
January 1, 2019

WAIVER OF SUBROGATION ON CONTRACTORS EQUIPMENT COVERAGE to be provided in favour of the Certificate Holder(s), but only when the partial or sole negligence of the Certificate Holder(s) is not the proximate cause of the loss or damage.

COVERING: Work usual to the operations of the Named Insured with respect to: Massey Tower - 179 Yonge Street, Toronto, Ontario

NOTE: It is agreed that MOD Developments (197 Yonge) Limited Partnership, Tucker Hi-Rise Construction Inc. is(are) added as Additional Insured(s) with respect to Commercial General Liability and Umbrella Liability and then only with respect to liability arising out of the operations of the Named Insured at the above noted project / location.

It is further agreed that MOD Developments (197 Yonge) Limited Partnership will be given 60 days prior written notice of cancellation with respect to Commercial General Liability and Umbrella Liability and 15 days with respect to Third Party Liability (Owned vehicles), except where Statutory Conditions apply.

This Certificate of Insurance does not in any way amend or alter the terms, conditions and exclusions of the policies mentioned above.

Dated at Concord, Ontario this:

December 19, 2017

At the office of:

MASTERS INSURANCE LIMITED  
7501 Keele Street, Suite # 400  
Concord, Ontario, L4K 1Y2  
Tel: # 905-738-4164, Fax # 905-738-5143

MASTERS INSURANCE LIMITED

PER

*[Signature]*  
Daniela Gareri  
(Authorized Representative)



# FORMA-CON CONSTRUCTION

(A DIVISION OF 1033803 ONTARIO INC.)

HIRISE CONSTRUCTION INC.  
 JUL 20 2018  
 RECEIVED

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Jul 20/18

Appl #: 34

		Total
1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$122,042.58	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,551,042.58	\$20,551,042.58
	=====	
5. Total Progress	\$20,302,042.58	
6. Holdback	\$2,030,204.26	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$2,030,204.26	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$18,271,838.32	\$18,271,838.32
	-----	
10. Less line 9 from previous application	\$18,027,000.00	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$244,838.32	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$2,279,204.26
		=====
13. GST/HST BN # 135726081	\$31,828.98	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$276,667.30	
	=====	

**TUCKER HIRISE  
 CONSTRUCTION INC.**

COST CODE	PROJECT
ACCTNG	
PROJ. MGR.	
OWNER	



Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance certificate number / Numéro du certificat de décharge	Validity period (dd-mm- yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD DEVELOPMENTS (197 YONGE) LP	8 price st, toronto , ON, CAN	W200000EHS0 U	22-May-2018 to 20-Jul-2018

Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance certificate number / Numéro du certificat de décharge	Validity period (dd-mm- yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD DEVELOPMENTS (197 YONGE) LP	8 price st, toronto , ON, CAN	W200000EHS0 U	22-May-2018 to 20-Jul-2018



# FORMA-CON CONSTRUCTION

( A DIVISION OF 1033803 ONTARIO INC.)

318

407 Basaltic Road

Concord, Ontario

L4K 4W8

Phone (905) 303-8010

Fax (905) 303-8013

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Aug 20/18

Appl #: 35

Total

1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$122,042.58	
3. Unapproved Changes to Date	\$0.00	
	-----	
4. Contract Amount to Date	\$20,551,042.58	\$20,551,042.58
	=====	
5. Total Progress	\$20,387,042.58	
6. Holdback	\$2,038,704.26	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$2,038,704.26	
	-----	
9. Total Progress Less Curr.Holdback (5-8)	\$18,348,338.32	\$18,348,338.32
	-----	
10. Less line 9 from previous application	\$18,271,838.32	
	-----	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$76,500.00	
	=====	
12. Balance Unpaid Under Contract (4-9)		\$2,202,704.26
		=====
13. GST/HST BN # 135726081	\$9,945.00	
	-----	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$86,445.00	
	=====	

**TUCKER HIRISE  
CONSTRUCTION INC.**

COST CODE	PROJECT
ACCTNG	
PROJ. MGR.	
OWNER	

Clearance Certificate / Certificat de décharge

Contractor Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur	Contractor Address / Adresse de l'entrepreneur	Contractor Classification Unit and Description / Unité de classification de l'entrepreneur et description	Principal Legal / Trade Name / Appellation commerciale ou raison sociale de l'entrepreneur principal	Principal Address / Adresse de l'entrepreneur principal	Clearance certificate number / Numéro du certificat de décharge	Validity period (dd-mmm- yyyy) / Période de validité (jj/mm/aaaa)
1033803 ONTARIO INC. / FORMA-CON CONSTRUCTION / FORMA FINISHING	407 BASALTIC RD, CONCORD, ON, L4K4W8, CA	4224-001: Concrete Finishing 4222-001: Form Work (High- Rise) 4222-002: Form Work (Low- Rise)	MOD DEVELOPMENTS (197 YONGE) LP	8 PRICE ST, TORONTO, ON, M4W 1Z4, CAN	W200000EO0Z E	25-Jul-2018 to 22-Sep-2018

CERTIFICATE OF INSURANCE - 18-19-026

**THIS IS TO CERTIFY TO:** MOD Developments (197 Yonge) Limited Partnership  
 8 Price Street, 4th Floor  
 Toronto, Ontario  
 M4W 1Z4

that Policy(ies) of Insurance as herein described have been issued to the Insured named this date.

**NAMED INSURED:** Forma Con Construction  
 a Division of 1033803 Ontario Inc.  
 407 Basaltic Road,  
 Concord, Ontario  
 L4K 4W8

COVERAGE	INSURER & POLICY #	LIMIT	POLICY PERIOD
<b>COMMERCIAL GENERAL LIABILITY (OCCURRENCE FORM)</b> <i>(Applicable to Off Site Operations ONLY)</i> <i>(Wrap-Up Liability in effect for project noted herein)</i>	Northbridge General Insurance Corporation Policy #: CBC 0626497		January 1, 2018 to January 1, 2019
Each Occurrence Limit:		\$1,000,000	
General Aggregate Limit:		\$5,000,000	
Products and Completed Operations Aggregate Limit:		\$1,000,000	
Non-Owned Automobile Liability:		\$1,000,000	
Including:			
- Personal Injury, Broad Form Property Damage & Completed Operations			
- Blanket Contractual Liability, Contingent Employers Liability			
- Mould and Fungi, XCU Exclusion deleted			
- Rip & Tear-completed operations (\$500,000 per claim / aggregate)			
- Cross Liability / Severability of Interest Clause, Owners Contractors Protective			
- Contingent Wrap-up Liability (DID included), Hook Liability, Tenants Legal Liability			
<b>UMBRELLA LIABILITY</b> - In excess of Underlying Commercial General Liability Limit - Policy # CBC 0626497	Northbridge General Insurance Corporation Policy #: CBC 0626497	\$29,000,000 Per occurrence	January 1, 2018 to January 1, 2019
<b>THIRD PARTY AUTOMOBILE LIABILITY</b> - Owned Vehicles	Northbridge General Insurance Corporation Policy #: CBC0622946	\$1,000,000	January 1, 2018 to January 1, 2019
<b>UMBRELLA LIABILITY</b> - In excess of Third Party Automobile Liability Limits - Policy # CBC 0622946	Northbridge General Insurance Corporation Policy #: CBC0622946	\$29,000,000 Per occurrence	January 1, 2018 to January 1, 2019
<b>TOTAL LIMIT OF LIABILITY (COMMERCIAL GENERAL LIABILITY)</b>		<b>\$30,000,000</b>	<b>Per Occurrence</b>
<b>TOTAL LIMIT OF LIABILITY (THIRD PARTY AUTOMOBILE LIABILITY)</b>		<b>\$30,000,000</b>	<b>Per Occurrence</b>

**CONTRACTOR'S EQUIPMENT (Owned Schedule)**  
 - All Risk, subject to policy Terms, Exclusions and Deductibles

Northbridge General Insurance Corporation  
 Policy #: CBC 0626497

Equipment Owned and/or Long Term Leased by Named Insured

January 1, 2018 to  
 January 1, 2019

**WAIVER OF SUBROGATION ON CONTRACTORS EQUIPMENT COVERAGE** to be provided in favour of the Certificate Holder(s), but only when the partial or sole negligence of the Certificate Holder(s) is not the proximate cause of the loss or damage.

**COVERING:** Work usual to the operations of the Named Insured with respect to: Massey Tower - 179 Yonge Street, Toronto, Ontario

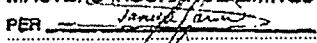
**NOTE:** It is agreed that MOD Developments (197 Yonge) Limited Partnership, Tucker Hi-Rise Construction Inc. is(are) added as Additional Insured(s) with respect to Commercial General Liability and Umbrella Liability and then only with respect to liability arising out of the operations of the Named Insured at the above noted project / location.

It is further agreed that MOD Developments (197 Yonge) Limited Partnership will be given 60 days prior written notice of cancellation with respect to Commercial General Liability and Umbrella Liability and 15 days with respect to Third Party Liability (Owned vehicles), except where Statutory Conditions apply.

This Certificate of Insurance does not in any way amend or alter the terms, conditions and exclusions of the policies mentioned above.

Dated at Concord, Ontario this: December 19, 2017

At the office of: **MASTERS INSURANCE LIMITED**  
 7501 Keele Street, Suite # 400  
 Concord, Ontario, L4K 1Y2  
 Tel: # 905-738-4164, Fax # 905-738-5143

**MASTERS INSURANCE LIMITED**  
 PER   
 Daniela Garen  
 (Authorized Representative)



# FORMA-CON CONSTRUCTION

( A D I V I S I O N O F 1 0 3 3 8 0 3 O N T A R I O I N C . )

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Aug 20/18

Appl #: 35

Total

1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$122,042.58	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,551,042.58	\$20,551,042.58
5. Total Progress	\$20,387,042.58	
6. Holdback	\$2,038,704.26	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$2,038,704.26	
9. Total Progress Less Curr.Holdback (5-8)	\$18,348,338.32	\$18,348,338.32
10. Less line 9 from previous application	\$18,271,838.32	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$76,500.00	
12. Balance Unpaid Under Contract (4-9)		\$2,202,704.26
13. GST/HST BN # 135726081	\$9,945.00	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$86,445.00	

**TUCKER HIRISE  
 CONSTRUCTION INC.**

COST CODE	PROJECT
ACCTNG	
PROJ. MGR.	
OWNER	



# FORMA-CON CONSTRUCTION

( A DIVISION OF 1033803 ONTARIO INC.)

407 Basaltic Road  
 Concord, Ontario  
 L4K 4W8

Phone (905) 303-8010  
 Fax (905) 303-8013

APPLICATION FOR PAYMENT

MOD DEVELOPMENTS (197 YONGE) LP  
 c/o TUCKER HIRISE CONSTRUCTION  
 3755 VICTORIA PARK AVENUE  
 TORONTO, ONTARIO M1W 3Z4

Project: 15300  
 MASSEY TOWER

Date: Nov 22/18

Appl #: 36

Total

1. Original Contract Sum	\$20,429,000.00	
2. Authorized Changes to Date	\$127,450.18	
3. Unapproved Changes to Date	\$0.00	
4. Contract Amount to Date	\$20,556,450.18	\$20,556,450.18
5. Total Progress	\$20,392,450.18	
6. Holdback	\$2,039,245.02	
7. Holdback Released	\$0.00	
8. Current Holdback (6-7)	\$2,039,245.02	
9. Total Progress Less Curr.Holdback (5-8)	\$18,353,205.16	\$18,353,205.16
10. Less line 9 from previous application	\$18,348,338.32	
11. NET AMOUNT PAYABLE THIS APPLICATION (9-10)	\$4,866.84	
12. Balance Unpaid Under Contract (4-9)		\$2,203,245.02
13. GST/HST BN # 135726081	\$632.69	
14. TOTAL AMOUNT PAYABLE THIS APPLICATION (11+13)	\$5,499.53	

**TUCKER HIRISE  
 CONSTRUCTION INC.**

COST CODE	PROJECT
ACCTNG	
PROJ MGR.	
OWNER	

# WORK ORDER 1749



## FORMA-CON CONSTRUCTION

(A DIVISION OF 1428508 ONTARIO LIMITED)

407 Basaltic Road, Concord, Ontario, L4K 4W8

Phone (905) 303-8010 Fax (905) 303-8013 Email: formacon@mail2.tube.com

GENERAL CONTRACTOR Tucker Hi-Rise

PROJECT Mass 4 tower DATE Oct 19/18

NO.	SUPPLY OF LABOUR	HOURS	TOTAL
	Carpenter		
	Labourer		
2	Cement Finisher	11 each	22
	Crane		
	Crane Operator		
	Swamper		
	Steelmen		

**WORK PERFORMED:**  
yard of forms on 6th floor

**MATERIAL / EQUIPMENT:**  
\* Hours verified

Authorized By: Peter Jaganick  
(Signature)

Print Name: Peter Jaganick



This is Exhibit <sup>“</sup>16<sup>”</sup> referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



A commissioner for taking Affidavits

Ministry of Government and  
Consumer Services

## Profile Report

1033803 ONTARIO INC. as of January 27, 2022

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	1033803 ONTARIO INC.
Ontario Corporation Number (OCN)	1033803
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	June 16, 1993
Registered or Head Office Address	407 Basaltic Road, Concord, Ontario, Canada, L4K 4W8

Certified a true copy of the record of the Ministry of Government and Consumer Services.

A handwritten signature in black ink, appearing to read "Barbara Duckitt".

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

**Active Director(s)**

There are no active Directors currently on file for this corporation

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

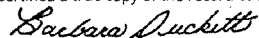
Director/Registrar

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Transaction Number: APP-655868715648  
Report Generated on January 27, 2022, 08:58

Active Officer(s)	
Name	Maria BOT
Position	Authorized Signing Officer
Address for Service	1065 Lakeshore Road East, Oakville, Ontario, Canada, L3T 7P6
Date Began	June 30, 1998

Certified a true copy of the record of the Ministry of Government and Consumer Services.



Director/Registrar

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Transaction Number: APP-655868715648  
Report Generated on January 27, 2022, 08:58

Corporate Name History

Name

1033803 ONTARIO INC.

Effective Date

June 16, 1993

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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**Active Business Names**

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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Transaction Number: APP-655868715648  
 Report Generated on January 27, 2022, 08:58

#### Expired or Cancelled Business Names

Name FORMA-FINISHING  
 Business Identification Number (BIN) 210415576  
 Status Inactive - Expired  
 Registration Date April 14, 2011  
 Expired Date April 13, 2016

Name FORMA FINISHING  
 Business Identification Number (BIN) 250674512  
 Status Inactive - Expired  
 Registration Date July 06, 2015  
 Expired Date July 05, 2020

Name FORMA FINISHING  
 Business Identification Number (BIN) 210415527  
 Status Inactive - Expired  
 Registration Date April 14, 2011  
 Expired Date April 13, 2016

Name FORMA-CON CONSTRUCTION  
 Business Identification Number (BIN) 210415907  
 Status Inactive - Expired  
 Registration Date April 14, 2011  
 Expired Date April 13, 2016

Name FORMA-CON CONSTRUCTION  
 Business Identification Number (BIN) 250674520  
 Status Inactive - Expired  
 Registration Date July 06, 2015  
 Expired Date July 05, 2020

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*Barbara Duckitt*

Director/Registrar

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## Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: RALPH AQUINO - DIRECTOR	April 15, 2021
CIA - Notice of Change PAF: BETH E CANAM - OTHER	November 21, 2018
Annual Return - 2016 PAF: JOHN AQUINO - DIRECTOR	July 09, 2017
Annual Return - 2015 PAF: JOHN AQUINO - DIRECTOR	July 17, 2016
Annual Return - 2014 PAF: JOHN AQUINO - DIRECTOR	July 18, 2015
Annual Return - 2013 PAF: JOHN AQUINO - DIRECTOR	November 08, 2014
Annual Return - 2012 PAF: JOHN AQUINO - DIRECTOR	July 20, 2013
Annual Return - 2011 PAF: JOHN AQUINO - DIRECTOR	July 14, 2012
Annual Return - 2010 PAF: RALPH AQUINO - DIRECTOR	July 30, 2011
Annual Return - 2009 PAF: RALPH AQUINO - DIRECTOR	July 31, 2010
CIA - Notice of Change PAF: AUSTIN PERSICO - OTHER	December 09, 2009
Annual Return - 2008 PAF: RALPH AQUINO - DIRECTOR	July 11, 2009
Annual Return - 2007 PAF: RALPH AQUINO - DIRECTOR	August 09, 2008

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*Barbara Duckitt*

Director/Registrar

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BCA - Articles of Amendment	December 21, 2007
Annual Return - 2006 PAF: RALPH AQUINO - DIRECTOR	July 28, 2007
Annual Return - 2005 PAF: RALPH AQUINO - DIRECTOR	July 15, 2006
Annual Return - 2004 PAF: RALPH AQUINO - DIRECTOR	July 23, 2005
Annual Return - 2003 PAF: RALPH AQUINO - DIRECTOR	July 31, 2004
Annual Return - 2002 PAF: RALPH AQUINO - DIRECTOR	July 20, 2003
Annual Return - 2001 PAF: RALPH AQUINO - DIRECTOR	July 21, 2002
CIA - Notice of Change PAF: ALLAN ZENER - OTHER	October 25, 2001
Annual Return - 2000 PAF: RALPH AQUINO	August 01, 2001
BCA - Articles of Amendment	September 01, 1999
CIA - Notice of Change PAF: ALLAN ZENER - OTHER	January 15, 1999
CIA - Notice of Change PAF: SHELDON PARKER - OTHER	April 24, 1998
Annual Return - 1994 PAF: ANA DEBORTOLI - OFFICER	July 26, 1995
CIA - Notice of Change PAF: ALLAN ZENER - OTHER	December 20, 1994
Other - SPECIAL NOTICE 2 PAF: OTHER	July 27, 1994
CIA - Initial Return	July 13, 1993

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*Barbara Duckitt*

Director/Registrar

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Transaction Number: APP-655868715648  
Report Generated on January 27, 2022, 08:58

PAF: SHELDON PARKER - OTHER

BCA - Special Resolution

July 13, 1993

BCA - Articles of Incorporation

June 16, 1993

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Government and Consumer Services.

*Barbara Duckitt*

Director/Registrar

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This is Exhibit <sup>"17"</sup> referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



A commissioner for taking Affidavits



**First Report of  
KSV Kofman Inc.  
as Trustee in Bankruptcy of  
1033803 Ontario Inc. and  
1087507 Ontario Limited**

February 21, 2020

and

**Eighth Report of  
KSV Kofman Inc.  
as Receiver and Manager of  
1033803 Ontario Inc. and  
1087507 Ontario Limited and  
Certain Related Other Property**

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## **Appendices**

<b>Appendix</b>	<b>Tab</b>
Supplier Respondents Corporate Profiles.....	A
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ESTATE NO.:31-2598338

ESTATE NO.:31-2598460

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCIES OF 1033803 ONTARIO INC. AND  
1087507 ONTARIO LIMITED

FIRST REPORT OF  
KSV KOFMAN INC.  
AS TRUSTEE IN BANKRUPTCY

COURT FILE NO: CV-18-608978-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BRIDGING FINANCE INC. AS AGENT FOR  
2665405 ONTARIO INC.

APPLICANT

- AND -

1033803 ONTARIO INC. AND 1087507 ONTARIO LIMITED

RESPONDENTS

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF *THE  
BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS  
AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O.  
1990, C. C.43, AS AMENDED

EIGHTH REPORT OF  
KSV KOFMAN INC.  
AS RECEIVER AND MANAGER

FEBRUARY 21, 2020

## 1.0 Introduction

1. On November 19, 2018, Bridging Finance Inc., as agent (the "Agent") for 2665405 Ontario Inc. (the "Lender"), made an application to the Ontario Superior Court of Justice (Commercial List) (the "Court") for the appointment of KSV Kofman Inc. ("KSV") as receiver and manager of:
  - a. all the assets, undertaking and property of 1033803 Ontario Inc., operating as Forma-Con Construction and Forma Finishing ("Forma Con"), including the real property municipally known as 3420 Queen Street East, Brampton and 407 Basaltic Road, Concord;
  - b. all the assets, undertaking and property of 1087507 Ontario Limited ("108" and together with Forma Con, the "FC Debtors"), including the real property municipally known as 4431 Stouffville Road, Stouffville;
  - c. certain assets of Bondfield Construction Company Limited ("BCCL") and Bondfield Construction Equipment Ltd. ("BCEL", together with BCCL, Forma Con, 108 and several other related entities, the "Group"); and
  - d. the real property municipally known as 131 Saramia Crescent, Vaughan owned by Ralph Aquino, a limited guarantor of the indebtedness of the Group to the Lender.
2. The Court granted the relief requested by the Agent on the return of the receivership application and KSV was appointed receiver (the "Receiver").

### 1.1 BCCL and the BCCL Investigation

1. BCCL is a full-service construction company operating in Southern Ontario and an affiliate of the FC Debtors.
2. On April 3, 2019, BCCL and several related entities were granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") and Ernst & Young Inc. ("E&Y") was appointed Monitor of BCCL and certain related entities (the "Monitor").
3. On May 30, 2019, the Court authorized the Monitor to, *inter alia*, investigate certain transactions involving BCCL and to deliver a report summarizing its investigation (the "Monitor's Investigation Report").
4. On October 30, 2019, the Monitor issued the Monitor's Investigation Report. A copy of the Monitor's Investigation Report is available on E&Y's website at: <https://documentcentre.eycan.com/>. The Monitor's Investigation Report details that BCCL and certain affiliates, including Forma Con, paid in excess of \$80 million to certain parties ("Suppliers of Interest") that do not appear to have provided any goods or services to the Group.

5. In connection with the Monitor's Investigation Report, the Monitor is seeking a declaration that transactions between BCCL and certain Suppliers of Interest are transfers at undervalue. The Monitor is also seeking various ancillary relief, including that certain respondents are jointly and severally liable to BCCL for the value of the transactions.
6. The Monitor does not have any capacity in respect of the FC Debtors.

## 1.2 FC Bankruptcy

1. Pursuant to an order of the Court issued on December 2, 2019 (the "Bankruptcy Order"), the Receiver was granted authority to file assignments in bankruptcy on behalf of the FC Debtors. On December 19, 2019, the Receiver filed the assignments and KSV was appointed trustee in bankruptcy of each of the FC Debtors (the "Trustee"). KSV's appointments were affirmed at creditors' meetings convened on January 8, 2020.
2. One of the purposes of the bankruptcy proceedings is for the Trustee to conduct an investigation similar to the one carried out by the Monitor and to pursue transfers at undervalue involving the FC Debtors (the "FC Investigation").
3. On January 8, 2020, the Inspectors appointed in the FC Debtors' bankruptcies unanimously passed resolutions authorizing the Trustee to commence the FC Investigation. As detailed below, the FC Investigation has identified that Forma Con paid approximately \$34 million to Suppliers of Interest that do not appear to have provided any goods or services to Forma Con. (This is a subset of the \$80 million identified in the Monitor's Investigation Report.)
4. On February 14, 2020, the Inspectors authorized the Trustee to commence an application (the "Application") for:
  - a. a declaration that the transfer of funds from Forma Con to the Supplier Respondents (as defined below) between December 19, 2014 and December 19, 2019 (the "Impugned Transactions") are transfers at undervalue for the purposes of section 96 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA") and are void as against the Trustee;
  - b. an order that John Aquino, the Estate of Michael Solano ("Solano"), Marco Caruso ("Caruso"), Joe Ana ("Ana"), Lucia Coccia-Canderle ("Coccia-Canderle") and Domenic Dipede ("Dipede") (collectively, the "Individual Respondents") and the Supplier Respondents (the "Individual Respondents and the Supplier Respondents are defined as the "Respondents") shall jointly and severally pay to Forma Con the value of the payments received by the Supplier Respondents through the Impugned Transactions, collectively;
  - c. an order that the Respondents hold in trust all funds that they received, directly or indirectly, pursuant to the Impugned Transactions; and
  - d. an order permitting the Trustee to trace any and all funds that have been received by the Respondents as a result of the Impugned Transactions into any funds, real property or personal property of the Respondents.



### 1.3 Purpose of this Report

1. The purpose of this report ("Report") is to summarize the results of the FC Investigation.

### 1.4 Restrictions

1. In preparing this Report, the Trustee has relied upon the Group's unaudited financial information, including its books and records, discussions with its management, discussions with the Monitor and the Monitor's Investigation Report (collectively the "Information"). The Trustee has not audited, reviewed or otherwise verified the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
2. The Trustee expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Trustee in preparing this Report. Any party wishing to place reliance on the Group's financial information should perform its own diligence.

### 1.5 Currency

1. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

## 2.0 Investigations

### 2.1 E&Y's Phase I and Phase II Investigations

1. E&Y was retained in late 2018 by counsel for Zurich Insurance Company Ltd., the primary bonding company for BCCL, to conduct a forensic investigation into financial irregularities at the Group (the "Phase I Investigation"). The Phase I Investigation included a review of the accounting records for the Group, as well as various emails on BCCL's server and selected hard drives. E&Y's engagement was terminated prior to the date of the Initial Order issued in the CCAA proceedings.
2. Solano is John Aquino's cousin. Solano was an IT Manager for the Group and was not engaged in vendor or procurement matters. As identified by E&Y, Solano sent over 100 emails to individuals acting on behalf of the Suppliers of Interest to instruct them on: (i) the amounts to be invoiced to the Group for work or supplies allegedly provided by those Suppliers of Interest, (ii) the description that should be included in the invoices for that work or supply, and (iii) the projects to be charged. As a result of the Phase I Investigation, E&Y identified nineteen Suppliers of Interest. The Trustee understands that Solano died in January 2017.

3. On May 30, 2019, the Court authorized the Monitor and its counsel Norton Rose Fulbright Canada LLP to undertake a further investigation (the "Phase II Investigation"). The purpose of the Phase II Investigation was to verify the concerns regarding transactions with the Suppliers of Interest and to investigate the scope and details of these transactions.
4. The findings from the Phase II Investigation were provided in the Monitor's Investigation Report. That Report sets out that the Group paid in excess of \$80 million to the Suppliers of Interest for no consideration.
5. The Receiver and the Monitor entered a protocol regarding, *inter alia*, the sharing of information related to the Phase II Investigation (the "Protocol"). On September 18, 2019, the Court approved the Protocol. The Protocol is subject to a sealing order. A copy of the Protocol is attached as Confidential Appendix "1".

## 2.2 FC Investigation

1. As a significant portion of the transactions identified by E&Y involve Forma Con, KSV (in its then capacity as Receiver) determined it should conduct its own investigation. In order to minimize costs, KSV met with E&Y to obtain an overview of its investigation and to request the documents required for the FC Investigation in E&Y's possession. On January 7, 2020, E&Y provided the Trustee with the following, which was sourced from Group's records:
  - a. copies of cheques issued by Forma Con to the Suppliers of Interest (the "Cheques");
  - b. accounting records for the Suppliers of Interest extracted from the Group's accounting system (the "Supplier History Reports"); and
  - c. a copy of Solano's e-mail mailbox.<sup>1</sup>

## 2.3 Results of the FC Investigation

1. The FC Investigation identifies that between 2011 to 2017, Forma Con paid Suppliers of Interest approximately \$34 million for no consideration.
2. The statutory review period under the BIA is December 19, 2014 to December 19, 2019 under the BIA (the "Review Period"). Of the payments to the Suppliers of Interest, approximately \$11.4 million occurred during the Review Period. The parties who received monies during this period are referred to herein as the "Supplier Respondents".

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<sup>1</sup>KSV and its counsel, Torys LLP, agreed not to review any potentially privileged emails in Solano's email account.

3. A summary of the transactions involving the Supplier Respondents is provided in the table below.

<b>\$000s, unaudited</b>	<b>Payments Before 12/19/2014</b>	<b>Payments After 12/19/2014</b>	<b>Total Payments</b>
<b>Supplier Respondents</b>			
Clearway Haulage	-	968	968
MMC General Contracting	-	2,795	2,795
MTEC Construction	3,859	5,260	9,119
Strada Haulage	109	1,711	1,820
2104664 Ontario Inc.	170	90	260
2304288 Ontario Inc.	565	543	1,108
	4,703	11,367	16,070
<b>Other Suppliers of Interest</b>			
2299726 Ontario Inc.	14,134	-	14,134
2104661 Ontario Inc.	1,516	-	1,516
B.I.C. Haulage	37	-	37
Terra Haulage	832	-	832
TP Inc	229	-	229
Vaughan Haulage	639	-	639
GGC Gem General Contracting	362	-	362
GH Gem Haulage	91	-	91
Gem Stone	249	-	249
ABC Masonry	58	-	58
	18,147	-	18,147
Total	22,850	11,367	34,217

4. As reported in the Monitor's Investigation Report and based on discussions with Steven Aquino, the current President of BCCL and formerly the Vice President of Operations of BCCL, the Trustee understands that none of the Suppliers of Interest provided goods or services to Forma Con.
5. Corporate profile reports for each of the Supplier Respondents are attached as Appendix "A". The Receiver has enclosed these reports as they show that Coccia-Canderle and Dipede were officers and directors of certain of the Supplier Respondents. The reports also show the registered addresses of all of the Supplier Respondents, many of which are common. For completeness, the Receiver has included all of the corporate profile reports for the Supplier Respondents.

## 2.4 The Impugned Transactions

1. Substantially all the transactions follow a similar pattern:

Step 1: the process is initiated with an email from Solano to Caruso or Ana advising a Supplier of Interest to invoice Forma Con, the amount to be invoiced<sup>2</sup>, the project to be invoiced and the description of the work to be included on the invoice. For example:

**MS** Michael Solano  
To: Marco Caruso

Mon 2015-04-06 2:25 PM

Reply Reply All Forward

# Company to Bondfield  
Re: Hawkesbury Hospital  
To cut and remove existing slab on grade. Excavate and prepare existing base for new rebar and slab.  
\$223,000

Haulage Company to Bondfield  
Re: Cambridge Hospital  
To excavate and provide labour to underpin existing walls.  
\$126,000

# Company to Forma-Con  
Re: Sheridan College  
To supply, install and weld bolts to piles to fasten forms against shoring. Fabricate exterior wall forms and install on site.  
\$281,000

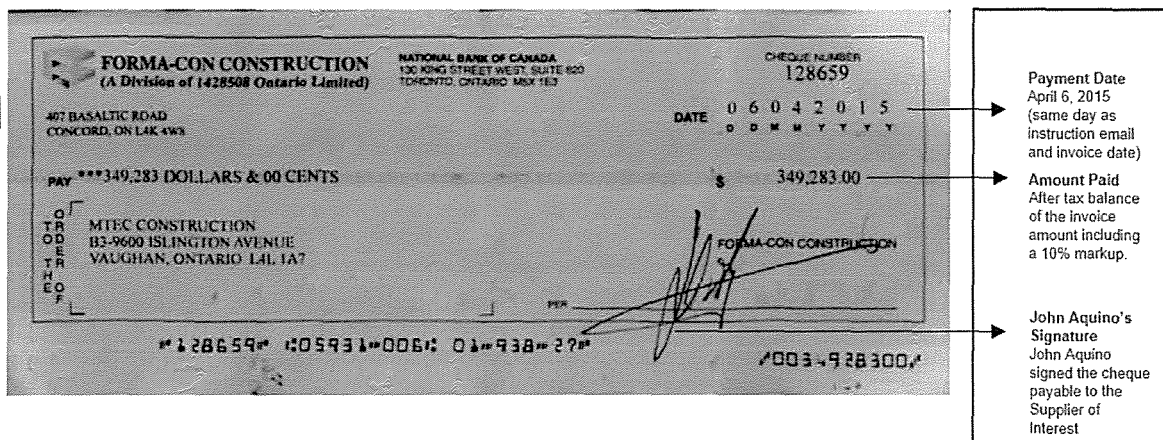
Michael Solano  
IT Manager

<b>Date of Instructions</b>	April 6, 2015; 14:25
<b>Construction Project</b>	Sheridan College
<b>Description of work performed</b>	To supply, install and weld bolts to piles to fasten forms against shoring. Fabricate exterior wall forms and install on site.
<b>Invoice Amount</b>	This amount is before a 10% markup.
	\$281,000
	x 110%
	<b>= \$309,100</b>

<sup>2</sup> In all cases, the amount invoiced either is the amount in the email or the amount in the email with a 10% markup.



Step 3: the invoice would be paid by cheque immediately following issuance of the invoice. The cheques were signed by John Aquino or Solano.



2. The Trustee has located email correspondence for 82% of the Impugned Transactions.
3. The balance of the transactions is supported by cheques to the Supplier Respondents. The Trustee does not have an invoice or email correspondence for these transactions; however, it understands based on conversations with the Monitor and Steve Aquino that none of the suppliers provided any services to Forma Con.
4. Examples of the above transactions are provided in Appendix "B" for each Supplier Respondent<sup>3</sup>.

## 2.5 Financial Irregularities in Transactions

1. The Trustee's findings are consistent with the Monitor's findings, as follows:
  - *Transactions with Supplier Respondents provided no business purposes:* the Trustee understands from conversations with Steven Aquino, the Monitor's Investigation Report and a review of Forma Con's books and records, that none of the Suppliers of Interest provided goods or services to Forma Con.
  - *Controls and standard payment practices were not followed:* the invoices from the Suppliers of Interest were, on average, paid by Forma Con in 1.3 days. The Trustee understands from the Monitor's Investigation Report that the Group's usual payment terms were 30 to 90 days.

<sup>3</sup> For two of the Supplier Respondents, 2104664 Ontario Inc. and 2304288 Ontario Inc., only copies of cheques issued to the Supplier Respondents have been provided as no email correspondence can be located.

- *Supplier Respondents are connected to each other and to the Group's representatives through the Individual Respondents:* as reflected in the Monitor's Investigation Report, many of the Supplier Respondents share the same addresses, phone numbers and bank accounts. For example, Caruso delivered falsified invoices to Forma-Con on behalf of at least three different Supplier Respondents, which invoices accounted for approximately 70% of the Impugned Transactions. Ana, another Individual Respondent, sent invoices on behalf of a Supplier Respondent. Coccia-Canderle is listed as a director on the corporate profiles of certain of the Supplier Respondents (MTEC Construction, MMC General Contracting and Strada Haulage). Dipede is listed as a director on the corporate profiles of 2304288 Ontario Inc. ("230"), a Supplier Respondent.

### 3.0 Trustee's Preliminary Conclusions

1. The Trustee believes it is appropriate to commence an Application against each of the Respondents in connection with the Impugned Transactions on the basis that the transfers to the Supplier Respondents were transfers at undervalue that are subject to Section 96 of the BIA.

#### 3.1 Section 96 of the BIA

1. Section 96 of the BIA states:

*96 (1) On application by the trustee, a court may declare that a transfer at undervalue is void as against...the trustee — or order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if...*

*(b) the party was not dealing at arm's length with the debtor and*

*(i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy, or*

*(ii) the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and*

*(A) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or*

*(B) the debtor intended to defraud, defeat or delay a creditor.*

2. A 'transfer at undervalue' is defined in the BIA as "a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor";

3. A party is privy to a transfer at undervalue if they (i) did not deal at arm's length with any party to the transfer; and (ii) by reason of the transfer, directly or indirectly received a benefit or caused a benefit to be received by another person.
4. The Trustee believes the proposed Application against the Respondents satisfies the criteria required to obtain a remedy in this case.

**3.1.1 The transfers to the Supplier Respondents were transfers at undervalue.**

1. The invoiced goods and services described in the Impugned Transactions were never provided by the Supplier Respondents. Forma Con did not receive any consideration in return for its payments to the Supplier Respondents.

**3.1.2 The transfers to the Supplier Respondents were non-arm's length transfers.**

1. Forma Con and the Supplier Respondents were not dealing at arm's length. The invoices for the transactions appear to have been fabricated by Supplier Respondents at the direction of the Group's management. The Monitor's Investigation Report reflects that the Suppliers of Interest made material payments to Individual Respondents.

**3.1.3 Transfers during the five year "look back" period.**

1. \$11.4 million was transferred to the Supplier Respondents during the Review Period. This amount may increase subject to further review and investigation.

**3.1.4 The transfers to the Supplier Respondents were undertaken with an intention to defeat, delay or defraud creditors.**

1. The Impugned Transactions could only reasonably have been undertaken with the intent of defeating Forma Con's creditors. In particular,
  - i. the transactions were non-arm's length;
  - ii. the consideration was grossly inadequate;
  - iii. the transactions were concealed and included invoices containing false statements about consideration received by Forma Con;
  - iv. the transactions were undertaken with unusual haste;
  - v. in certain cases, Supplier Respondents were provided with names similar to existing suppliers of the Group in order to make them appear legitimate;
  - vi. the parties engaged in the transactions would reasonably have thought that these transactions would have a material adverse impact on the Forma Con's ability to eventually pay its creditors; and
  - vii. it appears that Individual Respondents who participated in this scheme received a direct or indirect benefit from the scheme.



**3.1.5 John Aquino, Caruso, Solano, Ana, Coccia-Canderle and Dipede were privy to the Impugned Transactions.**

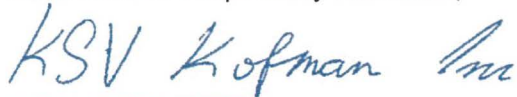
1. Each of John Aquino, Caruso, Ana, Coccia-Canderle and Dipede did not deal at arm's length with a party to the Impugned Transactions:
  - i. John Aquino was the President of Forma Con at the relevant time and was a 33% shareholder of the Group;
  - ii. Solano was John Aquino's relative and worked in the IT department. He had access to the systems and the knowledge of the business necessary to give effect to the Impugned Transactions. He had the trust of John Aquino;
  - iii. Caruso and Ana received instructions from Forma Con on the amounts to be paid to the Supplier Respondents through fictitious invoices that appear to have been coordinated by Solano; and
  - iv. Coccia-Canderle was a director listed on the corporate profiles of certain of the Supplier Respondents (MTEC Construction, MMC General Contracting and Strada Haulage) and the Monitor has reported that Coccia-Canderle is a signatory on bank accounts of some of the Suppliers of Interest.
  - v. Dipede was the former CFO of the Group at the relevant time. He was also a director listed on the corporate profile of 230, a Supplier Respondent. The Monitor has advised that Dipede is a signatory on the 230 bank account .
2. The evidence available to the Trustee indicates that each of John Aquino, Solano, Caruso and Ana had a role in causing the Impugned Transactions:
  - i. John Aquino signed cheques for Forma Con's payment of a significant portion of the invoices issued by the Supplier Respondents;
  - ii. Solano was a relative of John Aquino and appears to have been an active participant in the invoicing scheme – he directed the Supplier Respondents with respect to invoicing and signed cheques payable to Supplier Respondents;
  - iii. Caruso delivered falsified invoices to Forma-Con on behalf of at least three different Supplier Respondents, which invoices accounted for approximately 70% of the Impugned Transactions; and
  - iv. Ana delivered falsified invoices to Forma Con from one of the Supplier Respondents totalling approximately \$2.8 million.

#### 4.0 Recoveries

1. The Application is pursued for the benefit of the estate and all proceeds recovered by the Trustee shall be brought into the estate. The proceeds will be used for appropriate distribution under the BIA, subject to the rights of recovery of secured creditors, who may benefit from any proceeds of the application.

\* \* \*

All of which is respectfully submitted,



**KSV KOFMAN INC.,  
SOLELY IN ITS CAPACITY AS TRUSTEE AND  
RECEIVER AND MANAGER OF  
10338083 ONTARIO INC AND 1087507 ONTARIO LIMITED  
AND NOT IN ITS PERSONAL CAPACITY**

## Appendix “A”

Request ID: 022381318  
 Transaction ID: 69973385  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2018/11/20  
 Time Report Produced: 09:42:07  
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## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>	<b>Incorporation Date</b>
2104664	2104664 ONTARIO INC.	2006/06/07
		<b>Jurisdiction</b>
		ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>	<b>Former Jurisdiction</b>
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
<b>Registered Office Address</b>		<b>Date Amalgamated</b>
82 HARMONIA CRESCENT		NOT APPLICABLE
		<b>Amalgamation Ind.</b>
		NOT APPLICABLE
		<b>New Amal. Number</b>
		NOT APPLICABLE
		<b>Notice Date</b>
		NOT APPLICABLE
		<b>Letter Date</b>
		NOT APPLICABLE
<b>Mailing Address</b>		<b>Revival Date</b>
82 HARMONIA CRESCENT		NOT APPLICABLE
		<b>Continuation Date</b>
		NOT APPLICABLE
		<b>Transferred Out Date</b>
		NOT APPLICABLE
		<b>Cancel/Inactive Date</b>
		NOT APPLICABLE
		<b>EP Licence Eff.Date</b>
		NOT APPLICABLE
		<b>EP Licence Term.Date</b>
		NOT APPLICABLE
		<b>Date Commenced in Ontario</b>
		NOT APPLICABLE
		<b>Date Ceased in Ontario</b>
		NOT APPLICABLE
		<b>Number of Directors</b>
		<b>Minimum</b>
		<b>Maximum</b>
		00001
		00010
<b>Activity Classification</b>		
NOT AVAILABLE		

Request ID: 022381318  
 Transaction ID: 69973385  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2018/11/20  
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## CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2104664	2104664 ONTARIO INC.

Corporate Name History	Effective Date
2104664 ONTARIO INC.	2006/06/07

Current Business Name(s) Exist:	NO
Expired Business Name(s) Exist:	NO

Administrator: Name (Individual / Corporation)	Address
TINA A. IERACI	82 HARMONIA CRESCENT  WOODBIDGE ONTARIO CANADA L4L 3Y3

Date Began	First Director	
2006/06/07	YES	
Designation	Officer Type	Resident Canadian
DIRECTOR		Y

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## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>
2104664	2104664 ONTARIO INC.

<b>Administrator: Name (Individual / Corporation)</b>	<b>Address</b>
TINA IERACI	82 HARMONIA CRESCENT  WOODBRIDGE ONTARIO CANADA L4L 3Y3

<b>Date Began</b>	<b>First Director</b>	
2006/06/07	NOT APPLICABLE	
<b>Designation</b>	<b>Officer Type</b>	<b>Resident Canadian</b>
DIRECTOR		Y

<b>Administrator: Name (Individual / Corporation)</b>	<b>Address</b>
TINA IERACI	82 HARMONIA CRESCENT  WOODBRIDGE ONTARIO CANADA L4L 3Y3

<b>Date Began</b>	<b>First Director</b>	
2006/06/07	NOT APPLICABLE	
<b>Designation</b>	<b>Officer Type</b>	<b>Resident Canadian</b>
OFFICER	PRESIDENT	Y

Request ID: 022381318  
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# CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>
2104664	2104664 ONTARIO INC.

<b>Administrator: Name (Individual / Corporation)</b>	<b>Address</b>
TINA IERACI	82 HARMONIA CRESCENT  WOODBRIDGE ONTARIO CANADA L4L 3Y3

<b>Date Began</b>	<b>First Director</b>	
2006/06/07	NOT APPLICABLE	
<b>Designation</b>	<b>Officer Type</b>	<b>Resident Canadian</b>
OFFICER	SECRETARY	Y

<b>Administrator: Name (Individual / Corporation)</b>	<b>Address</b>
TINA IERACI	82 HARMONIA CRESCENT  WOODBRIDGE ONTARIO CANADA L4L 3Y3

<b>Date Began</b>	<b>First Director</b>	
2006/06/07	NOT APPLICABLE	
<b>Designation</b>	<b>Officer Type</b>	<b>Resident Canadian</b>
OFFICER	TREASURER	Y

Request ID: 022381318  
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Category ID: UN/E

Province of Ontario  
Ministry of Government Services

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## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2104664

2104664 ONTARIO INC.

Last Document Recorded

Act/Code Description

Form

Date

CIA ANNUAL RETURN 2008

1C

2009/04/18

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Director of Companies and Personal Property Security Branch.



Request ID: 022290094  
 Transaction ID: 69742203  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2018/10/26  
 Time Report Produced: 16:40:49  
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# CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
2304288	2304288 ONTARIO INC.	2011/11/01
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address	Date Amalgamated	Amalgamation Ind.
30 PUCCINI DRIVE	NOT APPLICABLE	NOT APPLICABLE
RICHMOND HILL ONTARIO CANADA L4E 2Y4	New Amal. Number	Notice Date
	NOT APPLICABLE	NOT APPLICABLE
Mailing Address	Letter Date	
30 PUCCINI DRIVE	NOT APPLICABLE	
RICHMOND HILL ONTARIO CANADA L4E 2Y4	Revival Date	Continuation Date
	NOT APPLICABLE	NOT APPLICABLE
	Transferred Out Date	Cancel/Inactive Date
	NOT APPLICABLE	NOT APPLICABLE
	EP Licence Eff.Date	EP Licence Term.Date
	NOT APPLICABLE	NOT APPLICABLE
	Number of Directors Minimum      Maximum	Date Commenced in Ontario
	00001      00010	NOT APPLICABLE
		Date Ceased in Ontario
		NOT APPLICABLE
Activity Classification		
NOT AVAILABLE		

Request ID: 022290094  
 Transaction ID: 69742203  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2018/10/26  
 Time Report Produced: 16:40:49  
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## CORPORATION PROFILE REPORT

**Ontario Corp Number**

**Corporation Name**

2304288

2304288 ONTARIO INC.

**Corporate Name History**

**Effective Date**

2304288 ONTARIO INC.

2011/11/01

**Current Business Name(s) Exist:**

NO

**Expired Business Name(s) Exist:**

NO

**Administrator:**

**Name (Individual / Corporation)**

**Address**

DOMENIC

30 PUCCINI DRIVE

DIPEDE

RICHMOND HILL  
 ONTARIO  
 CANADA L4E 2Y4

**Date Began**

**First Director**

2011/11/01

NOT APPLICABLE

**Designation**

**Officer Type**

**Resident Canadian**

DIRECTOR

Y

Request ID: 022290094  
 Transaction ID: 69742203  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2018/10/26  
 Time Report Produced: 16:40:49  
 Page: 3

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2304288

2304288 ONTARIO INC.

**Administrator:**

Name (Individual / Corporation)

Address

DOMENIC  
 DIPEDA

30 PUCCINI DRIVE  
  
 RICHMOND HILL  
 ONTARIO  
 CANADA L4E 2Y4

Date Began

First Director

2011/11/01

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

PRESIDENT

Y

**Administrator:**

Name (Individual / Corporation)

Address

DOMENIC  
 DIPEDA

30 PUCCINI DRIVE  
  
 RICHMOND HILL  
 ONTARIO  
 CANADA L4E 2Y4

Date Began

First Director

2011/11/01

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

SECRETARY

Y

Request ID: 022290094  
Transaction ID: 69742203  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2018/10/26  
Time Report Produced: 16:40:49  
Page: 4

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2304288

2304288 ONTARIO INC.

Last Document Recorded

Act/Code Description

Form

Date

CIA INITIAL RETURN

1

2011/11/03 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

Request ID: 022391415  
 Transaction ID: 69998992  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2018/11/21  
 Time Report Produced: 15:26:44  
 Page: 1

## LIST OF CURRENT BUSINESS NAMES REGISTERED BY A CORPORATION

### Ontario Corporation Number

2483251

### CORPORATION NAME

2483251 ONTARIO CORP.

REGISTRATION DATE	BUSINESS NAME	EXPIRY DATE	BUSINESS ID NUMBER
2015/09/16	CLEARWAY HAULAGE	2020/09/15	250909447
2015/09/17	CLEARWAY HAULAGE	2020/09/16	250912094

THE REPORT SETS OUT ALL BUSINESS NAMES REGISTERED OR RENEWED BY THE CORPORATION IN THE PAST 5 YEARS AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. IF MORE DETAILED INFORMATION IS REQUIRED, YOU MAY REQUEST A SEARCH AGAINST INDIVIDUAL NAMES SHOWN ON THIS REPORT.

The issuance of this report in electronic form is authorized by the Director of Companies and Personal Property Security Branch.

Request ID: 023166494  
 Transaction ID: 71986872  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2019/06/04  
 Time Report Produced: 09:20:16  
 Page: 1

# DOCUMENT REPLICA

## Registration

under the *Business Names Act - Corporations*  
 Form 2

Business Identification Number	Registration Type	Registration Date	Expiry Date
250490091	NEW REGISTRATION	2015/05/14	2020/05/13

**Business or Identification Name**

MMC CONTRACTING

**Mailing Address**

45 KINGSBRIDGE GARDEN CIRCLE  
 Suite : 1406  
 MISSISSAUGA  
 ONTARIO CANADA  
 L5R 3K4

**Activity being carried out**

CONTRACTING

**Business Address in Ontario**

SAME AS MAILING ADDRESS

**Ontario Corporation Number**

2466601

**Corporation Name**

2466601 ONTARIO INC.

**Incorporating Jurisdiction**

ONTARIO

**Address of Head or Registered Office of the corporation**

45 KINGSBRIDGE GARDEN CIRCLE  
 Suite : 1406  
 MISSISSAUGA  
 ONTARIO CANADA  
 L5R 3K4

Request ID: 023166494  
Transaction ID: 71986872  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/06/04  
Time Report Produced: 09:20:16  
Page: 2

# DOCUMENT REPLICA

## Registration

under the *Business Names Act* - Corporations  
Form 2

Business Identification Number	Registration Type	Registration Date	Business Name
250490091	NEW REGISTRATION	2015/05/14	MMC CONTRACTING

**Person authorizing this registration**

2466601 ONTARIO INC

END OF REPORT

The issuance of this report in electronic form is authorized by the Director of Companies and Personal Property Security Branch.

Request ID: 022361836  
 Transaction ID: 69923861  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2018/11/14  
 Time Report Produced: 13:50:36  
 Page: 1

# DOCUMENT REPLICA

## Registration

under the *Business Names Act - Corporations*  
 Form 2

Business Identification Number	Registration Type	Filing Date
240549634	AMENDMENT	2014/06/20

**Business or Identification Name**

MTEC CONSTRUCTION

**Mailing Address**

45 KINGSBRIDGE GARDEN CIR  
 Suite : 1406  
 MISSISSAUGA  
 ONTARIO CANADA  
 L5R 3K4

**Activity being carried out**

CONSTRUCTION

**Business Address in Ontario**

SAME AS MAILING ADDRESS

**Ontario Corporation Number**

2420570

**Corporation Name**

2420570 ONTARIO LTD.

**Incorporating Jurisdiction**

ONTARIO

**Address of Head or Registered Office of the corporation**

45 KINGSBRIDGE GARDEN CIR  
 Suite : 1406  
 MISSISSAUGA  
 ONTARIO CANADA  
 L5R 3K4



Request ID: 022361836  
Transaction ID: 69923861  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2018/11/14  
Time Report Produced: 13:50:36  
Page: 2

# DOCUMENT REPLICA

## Registration

under the *Business Names Act - Corporations*  
Form 2

Business Identification Number	Registration Type	Filing Date	Business Name
240549634	AMENDMENT	2014/06/20	MTEC CONSTRUCTION

**Person authorizing this registration**

COCCIA  
LUCIA

END OF REPORT

The issuance of this report in electronic form is authorized by the Director of Companies and Personal Property Security Branch.

Request ID: 022423344  
 Transaction ID: 70080248  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2018/11/29  
 Time Report Produced: 12:52:42  
 Page: 1

# DOCUMENT REPLICA

## Registration

under the *Business Names Act* - Corporations  
 Form 2

Business Identification Number	Registration Type	Registration Date	Expiry Date
240549311	NEW REGISTRATION	2014/06/03	2019/06/02

### Business or Identification Name

STRADA HAULAGE

### Mailing Address

9600 ISLINGTON AVENUE  
 Suite : B3  
 WOODBRIDGE  
 ONTARIO CANADA  
 L4L 1A7

### Activity being carried out

HAULAGE

### Business Address in Ontario

SAME AS MAILING ADDRESS

### Ontario Corporation Number

2420595

### Corporation Name

2420595 ONTARIO LTD.

### Incorporating Jurisdiction

ONTARIO

### Address of Head or Registered Office of the corporation

9600 ISLINGTON AVENUE  
 Suite : B3  
 WOODBRIDGE  
 ONTARIO CANADA  
 L4L 1A7

Request ID: 022423344  
Transaction ID: 70080248  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2018/11/29  
Time Report Produced: 12:52:42  
Page: 2

# DOCUMENT REPLICA

## Registration

under the *Business Names Act* - Corporations  
Form 2

Business Identification Number	Registration Type	Registration Date	Business Name
240549311	NEW REGISTRATION	2014/06/03	STRADA HAULAGE

Person authorizing this registration

2420595 ONTARIO LTD.

END OF REPORT

The issuance of this report in electronic form is authorized by the Director of Companies and Personal Property Security Branch.

Request ID: 022422831  
Transaction ID: 70078874  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2018/11/29  
Time Report Produced: 12:01:13  
Page: 1

# DOCUMENT REPLICA

## Registration

under the *Business Names Act - Corporations*  
Form 2

Business Identification Number	Registration Type	Filing Date
240549311	AMENDMENT	2014/06/20

**Business or Identification Name**

STRADA HAULAGE

**Mailing Address**

45 KINGSBRIDGE GARDEN CIR  
Suite : 1406  
MISSISSAUGA  
ONTARIO CANADA  
L5R 3K4

**Activity being carried out**

HAULAGE

**Business Address in Ontario**

SAME AS MAILING ADDRESS

**Ontario Corporation Number**

2420595

**Corporation Name**

2420595 ONTARIO LTD.

**Incorporating Jurisdiction**

ONTARIO

**Address of Head or Registered Office of the corporation**

45 KINGSBRIDGE GARDEN CIR  
Suite : 1406  
MISSISSAUGA  
ONTARIO CANADA  
L5R 3K4

Request ID: 022422831  
Transaction ID: 70078874  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2018/11/29  
Time Report Produced: 12:01:13  
Page: 2

# DOCUMENT REPLICA

## Registration

under the *Business Names Act* - Corporations  
Form 2

Business Identification Number	Registration Type	Filing Date	Business Name
240549311	AMENDMENT	2014/06/20	STRADA HAULAGE

**Person authorizing this registration**

COCCIA  
LUCIA

END OF REPORT

The issuance of this report in electronic form is authorized by the Director of Companies and Personal Property Security Branch.

## Appendix “B”

**From:** [Michael Solano](#)  
**To:** [Marco Caruso](#)  
**Date:** May 5, 2016 6:03:42 PM  
**Attachments:** [image2e8121.JPG](#)

---

TO FORMA-CON

Re: Hawkesbury  
To grind and rub exposed concrete  
112,000

---

Michael Solano  
IT Manager

[MSolano@bondfield.com](mailto:MSolano@bondfield.com)



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**2483251 ONTARIO CORP.**

**INVOICE**

PO Box 72054 Pine Valley  
Vaughan, Ont L4L 8N8

(647) 608-6073

**Sold To:** Forma-Con Construction  
407 Basaltic Road  
Concord, Ontario  
L4K 4W8

**Invoice Number:** 05-0216  
**Invoice Date:** May 2, 2016  
**Order Number:**

**Ship To:**  
Re: Hawkesbury

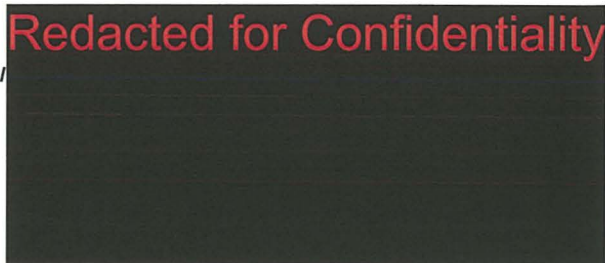
**Terms:** Net 15 days  
**Sales Rep:** N/A  
**Ship Via:** Our Truck  
**F.O.B.:** Site  
**Freight:** Includ.

Sales Tax Rate: 13.00%  
HST # 80353 1565

Quantity	Description	Unit Price	Amount
	To grind and rub exposed concrete.		\$ 123,200.00
		<b>Sub-Total:</b>	\$ 123,200.00
		<b>Tax:</b>	\$ 16,016.00
		<b>Freight:</b>	
			<b>\$ 139,216.00</b>
			PAY THIS AMOUNT

**MAKE ALL CHECKS PAYABLE TO:**  
2483251 Ontario Corp.  
PO Box 72054 Pine Valley  
Vaughan, Ont L4L 8N8

THANK YOU FOR YOUR BUSINESS





**From:** [Michael Solano](#)  
**To:** [MMCGENERAL.CONTRACTING@GMAIL.COM](mailto:MMCGENERAL.CONTRACTING@GMAIL.COM)  
**Date:** April 4, 2016 1:18:58 PM  
**Attachments:** [image1ffc1.JPG](#)

---

Re: Massey Tower

To weld all forms to shoring steel beams for underground work done over 3 months. Multiple mobilizations.

\$200,000.

---

Michael Solano  
IT Manager

[MSolano@bondfield.com](mailto:MSolano@bondfield.com)



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# INVOICE

**GENERAL CONTRACTING**  
 45 Kingsbridge Garden Circle,  
 Mississauga, Ontario.  
 L5R 3K4

**0058**

Invoice Date: April 04 2016  
 Invoice No: 0058

To: Bondfield Construction  
 407 Basaltic Rd  
 Concord Ont  
 L4K 4W8

<b>SERVICES</b>		<b>Amount</b>
		<b>\$</b>
Details		
1	To weld all forms to shoring steel beams for underground work done over 3 months. Multiple mobilizations	\$177,000.00
		\$177,000.00
	Sub total	
Hst #801900796	HST 13%	\$ 23,010.00
	Total	<u>\$200,010.00</u>

## INVOICE DETAILS

Re: Massey Tower	\$200,010.00
------------------	--------------

**From:** [Michael Solano](#)  
**To:** [Joe Ana](#)  
**Subject:** RE: revised invoice from MMC  
**Date:** April 4, 2016 5:14:38 PM

---

Joe please change to Forma-Con and call me

Michael Solano  
IT Manager

[MSolano@bondfield.com](mailto:MSolano@bondfield.com)

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-----Original Message-----

From: Joe Ana [<mailto:mmcgeneral.contracting@gmail.com>]  
Sent: April-04-16 5:10 PM  
To: Michael Solano  
Cc: mmcgeneral.contracting  
Subject: revised invoice from MMC



**GENERAL CONTRACTING**  
 45 Kingsbridge Garden Circle,  
 Mississauga, Ontario.  
 L5R 3K4

# INVOICE

0058

Invoice Date: April 04 2016  
 Invoice No: 0058

To: Forma Con  
 407 Basaltic Rd  
 Concord Ont  
 L4K 4W8

SERVICES		Amount \$
Details		
1	To weld all forms to shoring steel beams for underground work done over 3 months. Multiple mobilizations	\$200,000.00
	Sub total	\$200,000.00
Hst #801900796	HST 13%	\$ 26,00.00
	Total	<u>\$226,000.00</u>

## INVOICE DETAILS

Re: Massey Tower	\$226,000.00
------------------	--------------

Redacted for Confidentiality

**From:** [Michael Solano](#)  
**To:** [Marco Caruso](#)  
**Date:** January 22, 2015 6:32:50 PM  
**Attachments:** [imageb45b60.JPG](#)

---

To Bondfield

Re: Hawkesbury Hospital

To sawcut and remove slab on grade, drywall, hand dig to expose mechanical piping and dispose offsite. Backfill and prepare for new slab on grade.

\$168,000

To Forma-Con

Wilfred Laurier

To grind and rub exposed concrete walls as directed by foreman

\$129,000

To Forma-Con

Cambridge

To hand excavate form and pour underpinning to walls as shown and directed by foreman.

\$113,000

---

Michael Solano  
IT Manager

[MSolano@bondfield.com](mailto:MSolano@bondfield.com)



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**From:** [Michael Solano](#)  
**To:** [Marco Caruso](#)  
**Date:** August 7, 2015 4:06:10 PM  
**Attachments:** [image4b676b.JPG](#)

---

TO BONDFIELD

Re: D2/D4 Project  
To remove fill offsite including dump fees  
\$71,000

TO FORMA-CON

Re: D2/D4 Project  
To fabricate wall foundation forms and deliver to site  
\$129,000

Re: Cambridge Hospital  
To fabricate column & wall, deliver to site and weld to shoring  
\$118,000

Re: Sheridan  
To supply labour & trucking to load and haul back to yard all forming equipment and  
plywood  
\$88,000

---

Michael Solano  
IT Manager

[MSolano@bondfield.com](mailto:MSolano@bondfield.com)



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# STRADA HAULAGE

# INVOICE

45 Kingsbridge Garden Circle  
 Mississauga, Ont L5R 3K4 (647) 608-6073

**SOLD TO:** Forma-Con Construction  
 407 Basaltic Road  
 Concord, Ont  
 L4K 4W8

INVOICE NUMBER 07-3115  
 INVOICE DATE July 31, 2015  
 OUR ORDER NO.

**SHIPPED TO:**  
 Re: D2/D4 Project

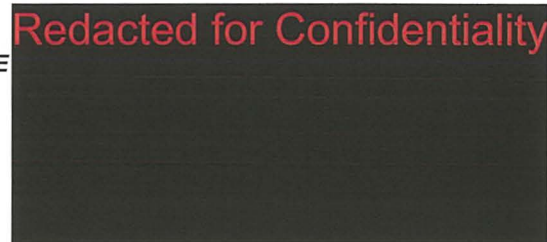
TERMS Net 15 days  
 SALES REP N/A  
 SHIPPED VIA Our Truck  
 F.O.B. Site  
 PREPAID or COLLECT Includ.

Sales Tax Rate: 13.00%  
 HST # 802263236

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1	To fabricate wall foundation forms and deliver to site.	\$ 141,900.00	\$ 141,900.00
		<b>SUBTOTAL:</b>	\$ 141,900.00
		<b>TAX:</b>	\$ 18,447.00
		<b>FREIGHT:</b>	
			<b>\$ 160,347.00</b>
			<b>PAY THIS AMOUNT</b>

**MAKE ALL CHECKS PAYABLE TO:**  
 Strada Haulage  
 45 Kingsbridge Garden Circle  
 Mississauga, Ont L5R 3K4

THANK YOU FOR YOUR BUSINESS





**Image(s) de chèque(s)**

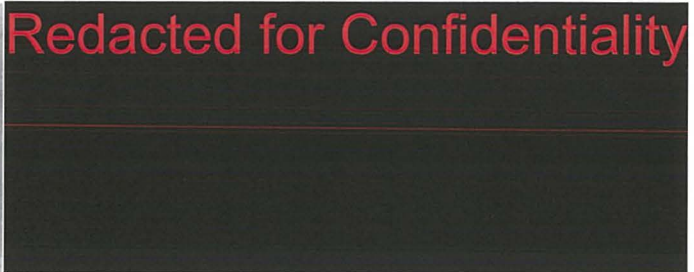
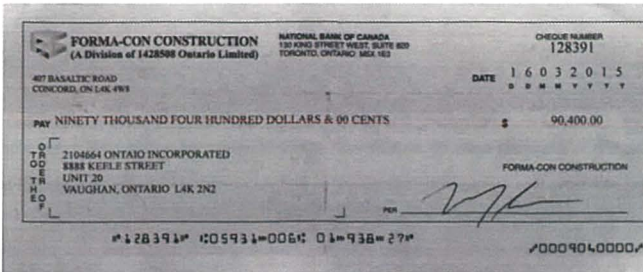
Demande no. 13286949 exécutée le 2018-12-07 14:20:48

Transit 05931, Compte 0193827

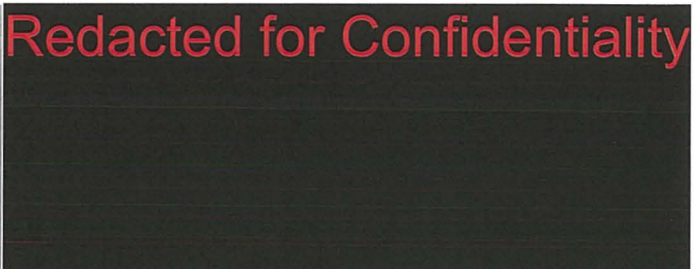
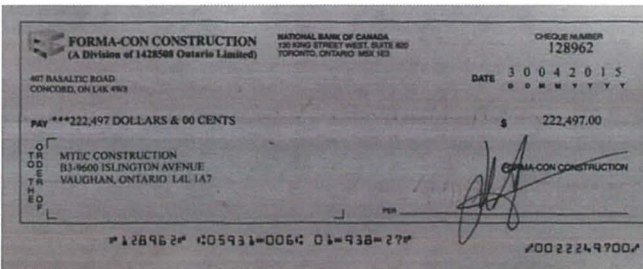
Transactions du 2015-03-17 au 2015-10-19

Numéro de chèque : 130241, 131240, 128391, 128962, 128963

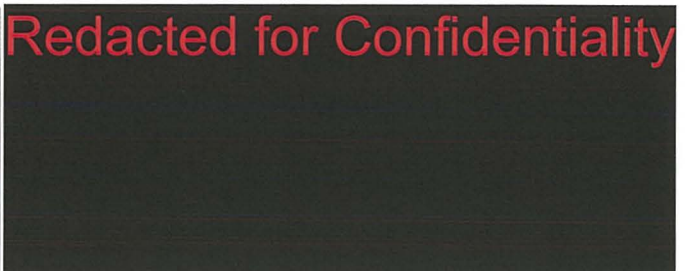
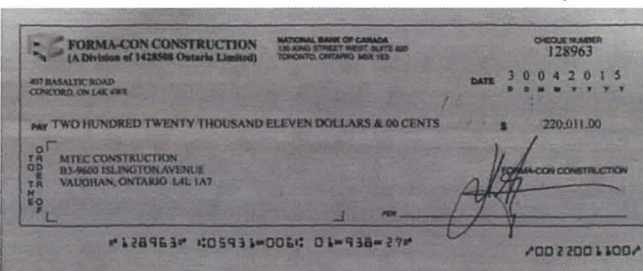
Date de transaction: 2015-03-17 - No de chèque: 128391 - Montant: 90 400,00 \$



Date de transaction: 2015-05-04 - No de chèque: 128962 - Montant: 222 497,00 \$



Date de transaction: 2015-05-04 - No de chèque: 128963 - Montant: 220 011,00 \$



**Image(s) de chèque(s)**

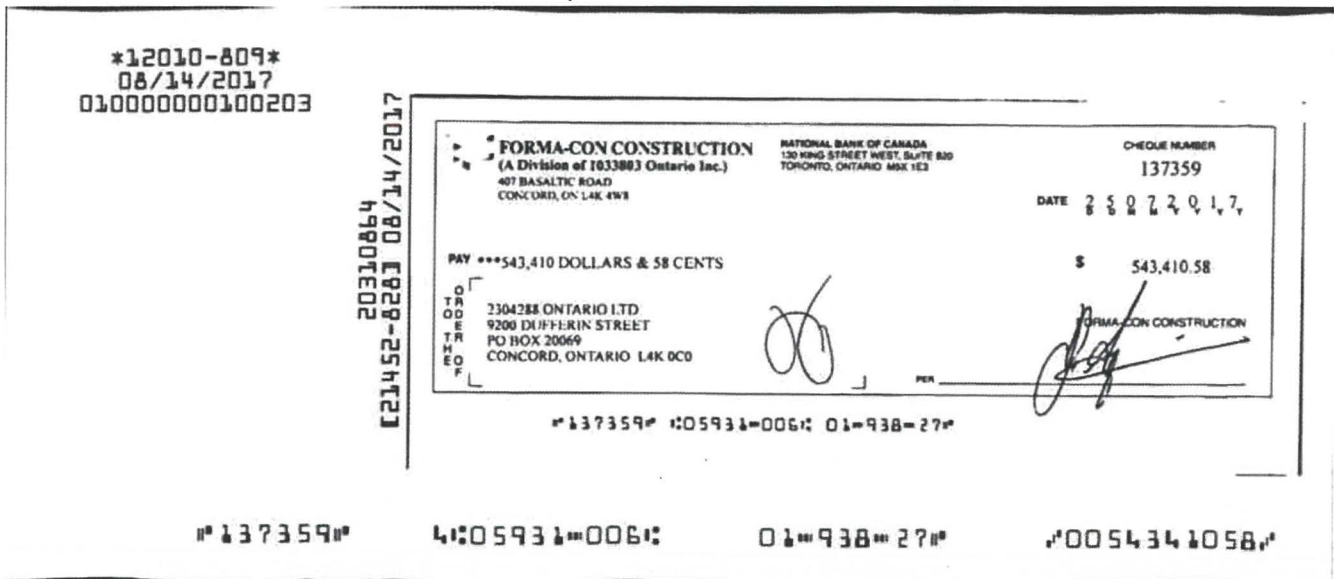
Demande no. 13286778 exécutée le 2018-12-07 14:01:59

Transit 05931, Compte 0193827

Transactions à partir du 2017-08-14

Numéro de chèque : 137359

Date de transaction: 2017-08-14 - No de chèque: 137359 - Montant: 543 410,56 \$



**Redacted for Confidentiality**

This is Exhibit <sup>“ ”</sup> 18 referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



A commissioner for taking Affidavits



**Second Report of  
KSV Kofman Inc.  
as Trustee in Bankruptcy of  
1033803 Ontario Inc. and  
1087507 Ontario Limited**

**May 7, 2020**

**and**

**Ninth Report of  
KSV Kofman Inc.  
as Receiver and Manager of  
1033803 Ontario Inc. and  
1087507 Ontario Limited and  
Certain Related Other Property**

<b>Contents</b>		Page
1.0	Introduction .....	2
1.1	BCCL and the BCCL Investigation .....	2
1.2	FC Bankruptcy .....	3
1.3	Purpose of this Report .....	4
1.4	Restrictions .....	4
1.5	Currency .....	4
2.0	FC Investigation .....	4

## Appendices

Appendix	Tab
Notice of Application and Trustee's First Report (appendices omitted) .....	A
Transactions of Supplier Respondents .....	B



ESTATE NO.:31-2598338

ESTATE NO.:31-2598460

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCIES OF 1033803 ONTARIO INC. AND  
1087507 ONTARIO LIMITED

SECOND REPORT OF  
KSV KOFMAN INC.  
AS TRUSTEE IN BANKRUPTCY

COURT FILE NO: CV-18-608978-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BRIDGING FINANCE INC. AS AGENT FOR  
2665405 ONTARIO INC.

APPLICANT

- AND -

1033803 ONTARIO INC. AND 1087507 ONTARIO LIMITED

RESPONDENTS

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF *THE  
BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS  
AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O.  
1990, C. C.43, AS AMENDED

NINTH REPORT OF  
KSV KOFMAN INC.  
AS RECEIVER AND MANAGER

MAY 7, 2020

## 1.0 Introduction

1. On November 19, 2018, Bridging Finance Inc., as agent (the “Agent”) for 2665405 Ontario Inc. (the “Lender”), made an application to the Ontario Superior Court of Justice (Commercial List) (the “Court”) for the appointment of KSV Kofman Inc. (“KSV”) as receiver and manager of:
  - a. all the assets, undertaking and property of 1033803 Ontario Inc., operating as Forma-Con Construction and Forma Finishing (“Forma Con”), including the real property municipally known as 3420 Queen Street East, Brampton and 407 Basaltic Road, Concord;
  - b. all the assets, undertaking and property of 1087507 Ontario Limited (“108” and together with Forma Con, the “FC Debtors”), including the real property municipally known as 4431 Stouffville Road, Stouffville;
  - c. certain assets of Bondfield Construction Company Limited (“BCCL”) and Bondfield Construction Equipment Ltd. (“BCEL”, together with BCCL, Forma Con, 108 and several other related entities, the “Group”); and
  - d. the real property municipally known as 131 Saramia Crescent, Vaughan owned by Ralph Aquino, a limited guarantor of the indebtedness of the Group to the Lender.
2. The Court granted the relief requested by the Agent on the return of the receivership application and KSV was appointed receiver (the “Receiver”).

### 1.1 BCCL and the BCCL Investigation

1. BCCL is a full-service construction company operating in Southern Ontario and an affiliate of the FC Debtors.
2. On April 3, 2019, BCCL and several related entities were granted protection under the *Companies’ Creditors Arrangement Act* (“CCAA”) and Ernst & Young Inc. (“E&Y”) was appointed Monitor of BCCL and certain related entities (the “Monitor”).
3. On May 30, 2019, the Court authorized the Monitor to, *inter alia*, investigate certain transactions involving BCCL and to deliver a report summarizing its investigation (the “Monitor’s Investigation Report”).
4. On October 30, 2019, the Monitor issued the Monitor’s Investigation Report. A copy of the Monitor’s Investigation Report is available on E&Y’s website at: <https://documentcentre.eycan.com/>. The Monitor’s Investigation Report details that BCCL and certain affiliates, including Forma Con, paid in excess of \$80 million to certain parties (“Suppliers of Interest”) that do not appear to have provided any goods or services to the Group.

5. In connection with the Monitor's Investigation Report, the Monitor is seeking a declaration that transactions between BCCL and certain Suppliers of Interest are transfers at undervalue. The Monitor is also seeking various ancillary relief, including that certain respondents are jointly and severally liable to BCCL for the value of the transactions.
6. The Monitor does not have any capacity to act on behalf of the FC Debtors.

## 1.2 FC Bankruptcy

1. Pursuant to an order of the Court issued on December 2, 2019 (the "Bankruptcy Order"), the Receiver was granted authority to file assignments in bankruptcy on behalf of the FC Debtors. On December 19, 2019, the Receiver filed the assignments and KSV was appointed trustee in bankruptcy of each of the FC Debtors (the "Trustee"). KSV's appointments were affirmed at creditors' meetings convened on January 8, 2020.
2. One of the purposes of the bankruptcy proceedings is for the Trustee to conduct an investigation similar to the one carried out by the Monitor and to pursue transfers at undervalue involving the FC Debtors (the "FC Investigation").
3. On January 8, 2020, the Inspectors appointed in the FC Debtors' bankruptcies unanimously passed resolutions authorizing the Trustee to commence the FC Investigation. The FC Investigation has identified that Forma Con paid approximately \$34 million to Suppliers of Interest that appear not to have provided any goods or services to Forma Con. This is a subset of the \$80 million identified in the Monitor's Investigation Report.
4. The statutory review period under the BIA is December 19, 2014 to December 19, 2019 under the BIA (the "Review Period"). Of the payments to the Suppliers of Interest, approximately \$11.4 million occurred during the Review Period. The parties who received monies during this period are referred to herein as the "Supplier Respondents".
5. On February 14, 2020, the Inspectors authorized the Trustee to commence an application (the "Application") for:
  - a. a declaration that the transfer of funds from Forma Con to the Supplier Respondents during the Review Period (the "Impugned Transactions") are transfers at undervalue for the purposes of section 96 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA") and are void as against the Trustee;
  - b. an order that John Aquino, the Estate of Michael Solano ("Solano"), Marco Caruso, Joe Ana, Lucia Coccia-Canderle and Domenic Dipede (collectively, the "Individual Respondents") and the Supplier Respondents (the Individual Respondents and the Supplier Respondents are defined as the "Respondents") shall jointly and severally pay to Forma Con the value of the payments received by the Supplier Respondents through the Impugned Transactions, collectively;
  - c. an order that the Respondents hold in trust all funds that they received, directly or indirectly, pursuant to the Impugned Transactions; and



- d. an order permitting the Trustee to trace any and all funds that have been received by the Respondents as a result of the Impugned Transactions into any funds, real property or personal property of the Respondents.
6. On February 21, 2020, the Trustee launched its Application against the Respondents. A copy of the Notice of Application and the Trustee's First Report to Court which provides an overview of the FC Investigation is attached as Appendix "A".

### **1.3 Purpose of this Report**

1. The purpose of this report ("Report") is to provide the Court with the supporting documentation in the Trustee's possession in respect of the Impugned Transactions, including copies of emails, cheques and invoices.

### **1.4 Restrictions**

1. In preparing this Report, the Trustee has relied upon the Group's unaudited financial information, including its books and records, discussions with its management, discussions with the Monitor and the Monitor's Investigation Report (collectively the "Information"). The Trustee has not audited, reviewed or otherwise verified the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
2. The Trustee expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Trustee in preparing this Report. Any party wishing to place reliance on the Group's financial information should perform its own diligence.

### **1.5 Currency**

1. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

## **2.0 FC Investigation**

1. A significant portion of the transactions identified by E&Y involve Forma Con. Accordingly, KSV (in its then capacity as Receiver) conducted its own investigation of these transactions. In order to minimize costs, KSV met with E&Y to obtain an overview of its investigation and to request the documents in E&Y's possession required for the FC Investigation. On January 7, 2020, E&Y provided the Trustee with the following, which was sourced from the Group's records:
  - a. copies of cheques issued by Forma Con to the Suppliers of Interest (the "Cheques");
  - b. accounting records for the Suppliers of Interest extracted from the Group's accounting system (the "Supplier History Reports"); and
  - c. a copy of Solano's e-mail mailbox.

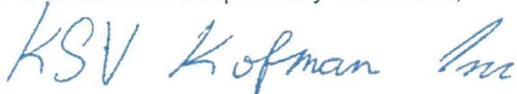
2. A summary of the transactions involving the Supplier Respondents during the Review Period is reflected below.

\$000's, unaudited	Amount
Clearway Haulage	968
MMC General Contracting	2,795
MTEC Construction	5,260
Strada Haulage	1,711
2104664 Ontario Inc.	90
2304288 Ontario Inc.	543
	11,367

3. Based on conversations with E&Y and Steve Aquino, the Trustee understands that none of the Supplier Respondents provided any goods or services to Forma Con. Therefore, in accordance with *BIA* s. 96(2), it is the Trustee's opinion that, in exchange for the above payments, the value of the consideration received by Forma Con was nil.
4. The Trustee has located emails, cheques and invoices for 82% of the Impugned Transactions. The Trustee has identified cheques for the remaining transactions but has thus far been unable to identify emails and invoices for the balance of the Impugned Transactions.
5. Attached as Appendix "B" are the emails, invoices and cheques for each of the Impugned Transactions in the Trustee's possession.
6. Similar to the accounting practice deficiencies identified by E&Y as it relates to BCCL, the Trustee has determined that Forma Con's regular accounting processes were not followed in the processing and payment of invoices from the Supplier Respondents. The Trustee has identified that the invoices submitted by the Supplier Respondents did not contain customary or sufficient information or backup to support payment by Forma Con. As E&Y identified with regard to BCCL, as part of Forma Con's usual accounting processes, invoices would be accompanied by timesheets, contracts, insurance documentation, evidence of material costs, breakdowns of work involved, purchase orders or other supporting documentation. That entire package would then typically be approved by the applicable project manager and would be paid by Forma Con. In the case of the invoices payable to the Supplier Respondents, the only documentation supporting a payment is the invoice itself, which is usually a single page with a limited description.

\* \* \*

All of which is respectfully submitted,



**KSV KOFMAN INC.,  
SOLELY IN ITS CAPACITY AS TRUSTEE AND  
RECEIVER AND MANAGER OF  
10338083 ONTARIO INC AND 1087507 ONTARIO LIMITED  
AND NOT IN ITS PERSONAL CAPACITY**

## Appendix “A”

Court File No.:  
CV-20-00636754-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

KSV KOFMAN INC. in its capacity as Trustee-in-Bankruptcy of 1033803  
ONTARIO INC. and 1087507 ONTARIO LIMITED

Applicant

- and -

JOHN AQUINO, MARCO CARUSO, GIUSEPPE ANASTASIO a.k.a.  
JOE ANA, THE ESTATE OF MICHAEL SOLANO, LUCIA COCCIA  
a.k.a. LUCIA CANDERLE, DOMINIC DIPEDA, 2483251 ONTARIO  
CORP. a.k.a. CLEARWAY HAULAGE, MMC GENERAL  
CONTRACTING, MTEC CONSTRUCTION, STRADA HAULAGE,  
2104664 ONTARIO INC., and 2304288 ONTARIO INC.

Respondents



**NOTICE OF APPLICATION**

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List on \_\_\_\_\_, 2020 at \_\_\_\_\_ a.m. or as soon after that time as the Application may be heard at the Courthouse, 330 University Avenue, Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: Feb 21, 2020

Issued by Jan Plonka  
~~Registrar~~ Superior Court of Justice  
 Local registrar

Address of court office 330 University Avenue  
 9<sup>th</sup> Floor  
 Toronto, Ontario  
 M5G 1R7

TO: **JOHN AQUINO**  
 9 Chieftain Cres., North York M2L 2H3  
 c/o GARDINER ROBERTS LLP  
 Bay Adelaide Centre – East Tower  
 22 Adelaide Street West, Suite 3600  
 Toronto, ON M5H 4E3

S. Michael Citak  
 Tel: 416.865.6706  
 Fax: 416.865.6636

[mcitak@grllp.com](mailto:mcitak@grllp.com)

AND TO: **MARCO CARUSO**  
 12 Sgotto Blvd., Woodbridge, ON L4H 1X1 - or - 59 Sarracini Crescent  
 Woodbridge, ON L4L 0E1

c/o CORSIANOS LEE BARRISTERS AND SOLICITORS  
 3800 Steeles Avenue West, Suite 203W  
 Vaughan, ON L4L 4G9

George Corsianos  
 Tel: 905.370.1092  
 Fax: 905.370.1095

[gcorsianos@cl-law.ca](mailto:gcorsianos@cl-law.ca)

AND TO: **GIUSEPPE ANASTASIO a.k.a. JOE ANA**  
68 Kirkhill Place, Woodbridge, ON L4L 7E3

c/o LAW OFFICE OF TERRY CORSIANOS  
1595 16<sup>th</sup> Avenue, Suite 301  
Richmond Hill, ON L4B 3N9

Terry Corsianos  
Tel: 905.709.7463  
Fax: 905.709.7400

[tcorsianos@corsianoslaw.com](mailto:tcorsianos@corsianoslaw.com)

AND TO: **THE ESTATE OF MICHAEL SOLANO**  
34 Seclusion Crescent  
Brampton, ON L6R 1L5

AND TO: **LUCIA COCCIA a.k.a. LUCIA CANDERLE**  
45 Kingsbridge Garden Circle, Suite 1406, Mississauga, ON L5R 3K4

c/o LAW OFFICE OF TERRY CORSIANOS  
1595 16<sup>th</sup> Avenue, Suite 301  
Richmond Hill, ON L4B 3N9

Terry Corsianos  
Tel: 905.709.7463  
Fax: 905.709.7400

[tcorsianos@corsianoslaw.com](mailto:tcorsianos@corsianoslaw.com)

AND TO: **DOMINIC DIPEDE**  
30 Puccini Drive  
Richmond Hill, ON L4E 2Y4

AND TO: **2483251 ONTARIO CORP. a.k.a. CLEARWAY HAULAGE**  
15 Frederick Street,  
Vaughan, ON L4L 1P9

- or -

P.O. Box 72054 Pine Valley  
Vaughan, ON L4L 8N8

AND TO: **MMC GENERAL CONTRACTING**  
45 Kingsbridge Garden Circle, Suite 1406  
Mississauga, ON L5R 3K4

AND TO: **MTEC CONSTRUCTION**  
45 Kingsbridge Garden Circle, Suite 1406  
Mississauga, ON L5R 3K4

- or -

B 3-9600 Islington Avenue  
Vaughan, ON L4L 1A7

AND TO: **STRADA HAULAGE**  
45 Kingsbridge Garden Circle, Suite 1406  
Mississauga, ON L5R 3K4

AND TO: **2104664 ONTARIO INC.**  
82 Harmonia Crescent  
Woodbridge, ON L4L 3Y3

AND TO: **2304288 ONTARIO INC.**  
30 Puccini Drive  
Richmond Hill, ON L4E 2Y4

## APPLICATION

1. The Applicant makes application for:
  - (a) a declaration that the transfers of funds from 1033803 Ontario Inc. (“**Forma-Con**”) to the Supplier Respondents (as defined below) between December 19, 2014 and December 19, 2019 (the “**Impugned Transactions**”):
    - (i) were transfers at undervalue for the purposes of section 96 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”); and
    - (ii) are void as against the Trustee;
  - (b) an order that the Respondents, either as parties to the Impugned Transactions or as privies thereto, or both, shall jointly and severally pay to Forma-Con the value of the payments received by the Supplier Respondents through the Impugned Transactions, collectively;
  - (c) an order that the Respondents hold in trust all funds that they received, directly or indirectly, pursuant to the Impugned Transactions;
  - (d) an order permitting the Applicant to trace any and all funds that have been received by the Respondents as a result of the Impugned Transactions into any funds, real property or personal property of the Respondents;
  - (e) prejudgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
  - (f) costs of this application on a substantial indemnity basis; and
  - (g) such further and other relief as counsel may advise and this Honourable Court may deem just.



2. The grounds for the application are:

*The Trustee*

- (a) On November 19, 2018, Bridging Finance Inc., as agent (the “**Agent**”) for 2665405 Ontario Inc. (the “**Lender**”), made an application to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for the appointment of KSV Kofman Inc. (“**KSV**”) as receiver and manager of:
- (i) all the assets, undertaking and property of Forma-Con;
  - (ii) all the assets, undertaking and property of 1087507 Ontario Limited (“**1087507**”);
  - (iii) certain assets (the “**Forma-Con Related Assets**”) of Bondfield Construction Company Limited (“**BCCL**”) and Bondfield Construction Equipment Ltd. (“**BCEL**”); and
  - (iv) the real property municipally known as 131 Saramia Crescent, Vaughan (the “**Vaughan Property**”) owned by Ralph Aquino.
- (b) The Court granted the relief requested by the Agent on the return of the receivership application and KSV was appointed receiver and manager of Forma-Con.
- (c) On December 2, 2019, the Court made an order authorizing the Receiver to file an assignment in bankruptcy for Forma-Con and 1087507 at such as time as the Receiver determined was appropriate;
- (d) On December 19, 2019, the Receiver filed the assignments in bankruptcy for Forma-Con and 1087507, and KSV (the “**Trustee**”) was appointed Trustee-in-Bankruptcy of Forma-Con and 1087507;

*The Monitor*

- (e) On March 5, 2019, BCCL, 352021 Ontario Limited, 950504 Ontario Inc., 2433485 Ontario Inc., and 2433486 Ontario Inc. (collectively, the “**Bondfield Group**”) filed

an application, returnable on March 6, 2019, seeking an Initial Order pursuant to the CCAA to, among other things, obtain a stay of proceedings to allow them an opportunity to restructure their business and affairs;

- (f) On April 3, 2019, the Court granted an Initial Order in these proceedings (as amended and restated, the “**Initial Order**”) that, among other things, appointed Ernst & Young Inc. (the “**Monitor**”) as the Monitor of the Bondfield Group, approved a continued stay of proceedings in favour of the Bondfield Group, approved a CCAA Filing Agreement between the Bondfield Group and certain stakeholders, approved interim financing facilities, and granted certain other orders to give effect to the CCAA Filing Agreement;
- (g) On June 27, 2019, the Court granted an Order, among other things, extending the Stay Period (as defined in the Initial Order) to January 31, 2020;

*The Respondents*

- (h) John Aquino resides in North York, Ontario and is the former President of BCCL and Forma-Con;
- (i) Marco Caruso (“**Caruso**”) is an individual residing in Woodbridge, Ontario;
- (j) Giuseppe Anastasio a.k.a. Joe Ana (“**Ana**”) is an individual residing in Woodbridge, Ontario;
- (k) The estate of Michael Solano (“**Solano**”) who, before his death in January 2017, was a former employee of BCCL;
- (l) Lucia Coccia a.k.a. Lucia Canderle (“**Coccia**”) is an individual residing in Mississauga, Ontario, and is an officer and director of Strada Haulage, MMC Contracting, and MTEC Construction, as defined below;
- (m) Dominic DiPede (“**DiPede**”) is an individual residing in Richmond Hill, Ontario and is an officer and director of 2304288 Ontario Inc., as defined below;

(together, the above individuals are referred to herein as the “**Individual Respondents**”);

- (n) 2483251 Ontario Corp. is a corporation formed pursuant to the laws of Ontario and is also known as Clearway Haulage (“**Clearway Haulage**”);
- (o) MMC General Contracting is a corporation formed pursuant to the laws of Ontario;
- (p) MTEC Construction is a corporation formed pursuant to the laws of Ontario;
- (q) Strada Haulage is a corporation formed pursuant to the laws of Ontario;
- (r) 2104664 Ontario Inc. (“**2104664**”) is a corporation formed pursuant to the laws of Ontario;
- (s) 2304288 Ontario Inc. (“**2304288**”) is a corporation formed pursuant to the laws of Ontario;

(together, the above companies will be referred to herein as the “**Supplier Respondents**”);

*The Monitor’s Investigation*

- (t) On May 30, 2019, the Court authorized the Monitor and its counsel, Norton Rose Fulbright Canada LLP (“**NRFC**”) to (i) undertake an investigation; (ii) engage Ernst & Young LLP (“**EY**”) to assist in the investigation and (iii) report to the court (the “**Monitor’s Investigation**”);
- (u) EY has advised the Monitor that there are financial irregularities involving invoices submitted by purported suppliers of the Bondfield Group and paid by BCCL which have resulted in the transfer of funds out from the Bondfield Group to these purported suppliers for no consideration;
- (v) EY has also identified various bank accounts into which the payments made to these purported suppliers were deposited;
- (w) To date, EY has identified that the Bondfield Group paid in excess of \$80 million to its purported suppliers between the period 2011-2018;

*The Trustee's Investigation*

- (x) Following the results of the Investigation, the Trustee undertook its own investigation related to irregular transactions involving Forma-Con and the Supplier Respondents;
- (y) The Trustee has determined through its investigation that there are financial irregularities involving invoices submitted by purported suppliers of Forma-Con (the “**Suppliers of Interest**”) including the Supplier Respondents, paid by Forma-Con which have resulted in the transfer of funds out from Forma-Con to these Suppliers of Interest;
- (z) To date, the Trustee has identified that Forma-Con paid approximately \$34 million to the Suppliers of Interest between 2011 and 2017.

*The Impugned Transactions*

- (aa) Between December 19, 2014 and December 19, 2019, Forma-Con paid the Supplier Respondents approximately \$11,367,000 CAD through the Impugned Transactions;
- (bb) The Impugned Transactions have the following attributes: there is limited or no supporting documentation other than brief invoices or accounting entries, payments were made within a day of being invoiced despite Forma-Con's typical payment terms being 30-90 days, the Supplier Respondents has no active operations, many of the Supplier Respondents carried on business from the same address;
- (cc) Typically, the Impugned Transactions followed a pattern in which:
  - (i) Solano would e-mail Caruso or Ana advising a Supplier of Interest to invoice Forma-Con with the amount to be invoiced and the description of the work to be included in the invoice;
  - (ii) Shortly thereafter, Caruso or Ana would send an invoice to Solano; and

- (iii) The invoice would then be paid by cheque from Forma-Con signed by either John Aquino or Solano;

*The Impugned Transactions Were Non-Arm's Length Transfers At Undervalue*

- (dd) Forma-Con did not receive any value for the Impugned Transactions. The Supplier Respondents do not carry on any active business in the purported nature of the Impugned Transactions and did not provide any supplies or services to Forma-Con in return for these payments;
- (ee) The Impugned Transactions were not undertaken on an arm's length basis;
- (ff) The Impugned Transactions were transfers at undervalue under Section 96 of the BIA;

*The Individual Respondents Were Privy To The Impugned Transactions*

- (gg) The Individual Respondents did not deal at arm's length with either Forma-Con or with a Supplier Respondent and had an important role in the Impugned Transactions:
  - (i) John Aquino was the President of Forma-Con at the relevant time, he approved most of the Impugned Transactions through, among other things, the execution of the Forma-Con cheques paying the Supplier Respondents;
  - (ii) Caruso sent invoices to Forma-Con on behalf of at least three of the Supplier Respondents, which invoices accounted for approximately 70% of of the Impugned Transactions;
  - (iii) Ana sent invoices to Forma-Con on behalf of a Supplier Respondent;
  - (iv) Solano was a relative of John Aquino and was an active participant in the invoicing scheme, including by instructing various Supplier Respondents on invoicing matters and executing Forma-Con cheques;

- (v) Coccia was a director listed on the corporate profiles of some of the Supplier Respondents;
- (vi) DiPede was a director listed on the corporate profile of a Supplier Respondent;
- (vii) Certain of the Individual Respondents received a direct or indirect benefit from the Impugned Transactions.

*Intention to Defeat, Delay or Defraud Creditors*

- (hh) The Impugned Transactions were undertaken with an intention to defeat, delay or defraud Forma-Con's creditors;
- (ii) The Impugned Transactions had a material adverse impact on Forma-Con's ability to pay its creditors and Forma-Con received no value for any of the transactions;
- (jj) In addition, (i) the Impugned Transactions were undertaken in a non-arm's length manner; (ii) the consideration for the transactions was grossly inadequate; (iii) the transactions were concealed and included invoices containing false statements about consideration received by Forma-Con; (iv) in certain cases the names of Supplier Respondents appear to have been selected to be very similar to the names of legitimate suppliers of the Bondfield Group; (v) the transactions were undertaken with unusual haste; and (v) it appears that Individual Respondents who participated in this scheme received a direct or indirect benefit from the scheme.

*Other Grounds for the Application*

- (kk) Section 96 of the BIA;
- (ll) Rules 1.04, 38 and 42.01 of the *Rules of Civil Procedure*;
- (mm) Section 103 of the *Courts of Justice Act*; and
- (nn) Such further and other grounds as counsel may advise and this Honourable Court may deem just.

3. The following documentary evidence will be used at the hearing of the application:
- (a) The Report of the Trustee dated February 21, 2020;
  - (b) Phase II Investigation Report of the Monitor dated October 30, 2019;
  - (c) Further reports of the Trustee; and
  - (d) Such further and other evidence as counsel may advise and this Honourable Court may deem just.

Date: February 21, 2020

**TORYS LLP**  
79 Wellington St. W., Suite 3000  
Box 270, TD Centre  
Toronto, Ontario  
M5K 1N2 Canada

Fax: 416.865.7380

**Scott A. Bomhof** (LSO#: 37006F)

Tel: 416.865.7370

Email: [sbomhof@torys.com](mailto:sbomhof@torys.com)

**Jeremy Opolsky** (LSO#: 60813N)

Tel: 416.865.8117

Email: [jopolsky@torys.com](mailto:jopolsky@torys.com)

**R. Craig Gilchrist** (LSO#: 77315B)

Tel: 416.865.7629

Email: [cgilchrist@torys.com](mailto:cgilchrist@torys.com)

Lawyers for the Applicant

KSV KOFMAN INC. in its capacity as  
Trustee-in-Bankruptcy of 1033803 ONTARIO  
INC. and 1087507 ONTARIO LIMITED  
Applicant

JOHN AQUINO et al  
and  
Respondents

Court File No.:

CV-20-00636754-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**NOTICE OF APPLICATION**

**TORYS LLP**

79 Wellington St. W., Suite 3000  
Box 270, TD Centre  
Toronto, Ontario  
M5K 1N2 Canada  
Fax: 416.865.7380

**Scott A. Bomhof** (LSO#: 37006F)  
Tel: 416.865.7370  
Email: [sbomhof@torys.com](mailto:sbomhof@torys.com)

**Jeremy Opolsky** (LSO#: 60813N)  
Tel: 416.865.8117  
Email: [jopolsky@torys.com](mailto:jopolsky@torys.com)

**R. Craig Gilchrist** (LSO#: 77315B)  
Tel: 416.865.7629  
Email: [cgilchrist@torys.com](mailto:cgilchrist@torys.com)

Lawyers for the Applicant







**First Report of  
KSV Kofman Inc.  
as Trustee in Bankruptcy of  
1033803 Ontario Inc. and  
1087507 Ontario Limited**

**February 21, 2020**

**and**

**Eighth Report of  
KSV Kofman Inc.  
as Receiver and Manager of  
1033803 Ontario Inc. and  
1087507 Ontario Limited and  
Certain Related Other Property**

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## **Appendices**

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ESTATE NO.:31-2598338  
ESTATE NO.:31-2598460

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCIES OF 1033803 ONTARIO INC. AND  
1087507 ONTARIO LIMITED

FIRST REPORT OF  
KSV KOFMAN INC.  
AS TRUSTEE IN BANKRUPTCY

COURT FILE NO: CV-18-608978-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BRIDGING FINANCE INC. AS AGENT FOR  
2665405 ONTARIO INC.

APPLICANT

- AND -

1033803 ONTARIO INC. AND 1087507 ONTARIO LIMITED

RESPONDENTS

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF *THE  
BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS  
AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O.  
1990, C. C.43, AS AMENDED

EIGHTH REPORT OF  
KSV KOFMAN INC.  
AS RECEIVER AND MANAGER

FEBRUARY 21, 2020

## 1.0 Introduction

1. On November 19, 2018, Bridging Finance Inc., as agent (the “Agent”) for 2665405 Ontario Inc. (the “Lender”), made an application to the Ontario Superior Court of Justice (Commercial List) (the “Court”) for the appointment of KSV Kofman Inc. (“KSV”) as receiver and manager of:
  - a. all the assets, undertaking and property of 1033803 Ontario Inc., operating as Forma-Con Construction and Forma Finishing (“Forma Con”), including the real property municipally known as 3420 Queen Street East, Brampton and 407 Basaltic Road, Concord;
  - b. all the assets, undertaking and property of 1087507 Ontario Limited (“108” and together with Forma Con, the “FC Debtors”), including the real property municipally known as 4431 Stouffville Road, Stouffville;
  - c. certain assets of Bondfield Construction Company Limited (“BCCL”) and Bondfield Construction Equipment Ltd. (“BCEL”, together with BCCL, Forma Con, 108 and several other related entities, the “Group”); and
  - d. the real property municipally known as 131 Saramia Crescent, Vaughan owned by Ralph Aquino, a limited guarantor of the indebtedness of the Group to the Lender.
2. The Court granted the relief requested by the Agent on the return of the receivership application and KSV was appointed receiver (the “Receiver”).

### 1.1 BCCL and the BCCL Investigation

1. BCCL is a full-service construction company operating in Southern Ontario and an affiliate of the FC Debtors.
2. On April 3, 2019, BCCL and several related entities were granted protection under the *Companies’ Creditors Arrangement Act* (“CCAA”) and Ernst & Young Inc. (“E&Y”) was appointed Monitor of BCCL and certain related entities (the “Monitor”).
3. On May 30, 2019, the Court authorized the Monitor to, *inter alia*, investigate certain transactions involving BCCL and to deliver a report summarizing its investigation (the “Monitor’s Investigation Report”).
4. On October 30, 2019, the Monitor issued the Monitor’s Investigation Report. A copy of the Monitor’s Investigation Report is available on E&Y’s website at: <https://documentcentre.eycan.com/>. The Monitor’s Investigation Report details that BCCL and certain affiliates, including Forma Con, paid in excess of \$80 million to certain parties (“Suppliers of Interest”) that do not appear to have provided any goods or services to the Group.

5. In connection with the Monitor's Investigation Report, the Monitor is seeking a declaration that transactions between BCCL and certain Suppliers of Interest are transfers at undervalue. The Monitor is also seeking various ancillary relief, including that certain respondents are jointly and severally liable to BCCL for the value of the transactions.
6. The Monitor does not have any capacity in respect of the FC Debtors.

## 1.2 FC Bankruptcy

1. Pursuant to an order of the Court issued on December 2, 2019 (the "Bankruptcy Order"), the Receiver was granted authority to file assignments in bankruptcy on behalf of the FC Debtors. On December 19, 2019, the Receiver filed the assignments and KSV was appointed trustee in bankruptcy of each of the FC Debtors (the "Trustee"). KSV's appointments were affirmed at creditors' meetings convened on January 8, 2020.
2. One of the purposes of the bankruptcy proceedings is for the Trustee to conduct an investigation similar to the one carried out by the Monitor and to pursue transfers at undervalue involving the FC Debtors (the "FC Investigation").
3. On January 8, 2020, the Inspectors appointed in the FC Debtors' bankruptcies unanimously passed resolutions authorizing the Trustee to commence the FC Investigation. As detailed below, the FC Investigation has identified that Forma Con paid approximately \$34 million to Suppliers of Interest that do not appear to have provided any goods or services to Forma Con. (This is a subset of the \$80 million identified in the Monitor's Investigation Report.)
4. On February 14, 2020, the Inspectors authorized the Trustee to commence an application (the "Application") for:
  - a. a declaration that the transfer of funds from Forma Con to the Supplier Respondents (as defined below) between December 19, 2014 and December 19, 2019 (the "Impugned Transactions") are transfers at undervalue for the purposes of section 96 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA") and are void as against the Trustee;
  - b. an order that John Aquino, the Estate of Michael Solano ("Solano"), Marco Caruso ("Caruso"), Joe Ana ("Ana"), Lucia Coccia-Canderle ("Coccia-Canderle") and Domenic Dipede ("Dipede") (collectively, the "Individual Respondents") and the Supplier Respondents (the "Individual Respondents and the Supplier Respondents are defined as the "Respondents") shall jointly and severally pay to Forma Con the value of the payments received by the Supplier Respondents through the Impugned Transactions, collectively;
  - c. an order that the Respondents hold in trust all funds that they received, directly or indirectly, pursuant to the Impugned Transactions; and
  - d. an order permitting the Trustee to trace any and all funds that have been received by the Respondents as a result of the Impugned Transactions into any funds, real property or personal property of the Respondents.

### 1.3 Purpose of this Report

1. The purpose of this report ("Report") is to summarize the results of the FC Investigation.

### 1.4 Restrictions

1. In preparing this Report, the Trustee has relied upon the Group's unaudited financial information, including its books and records, discussions with its management, discussions with the Monitor and the Monitor's Investigation Report (collectively the "Information"). The Trustee has not audited, reviewed or otherwise verified the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
2. The Trustee expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Trustee in preparing this Report. Any party wishing to place reliance on the Group's financial information should perform its own diligence.

### 1.5 Currency

1. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

## 2.0 Investigations

### 2.1 E&Y's Phase I and Phase II Investigations

1. E&Y was retained in late 2018 by counsel for Zurich Insurance Company Ltd., the primary bonding company for BCCL, to conduct a forensic investigation into financial irregularities at the Group (the "Phase I Investigation"). The Phase I Investigation included a review of the accounting records for the Group, as well as various emails on BCCL's server and selected hard drives. E&Y's engagement was terminated prior to the date of the Initial Order issued in the CCAA proceedings.
2. Solano is John Aquino's cousin. Solano was an IT Manager for the Group and was not engaged in vendor or procurement matters. As identified by E&Y, Solano sent over 100 emails to individuals acting on behalf of the Suppliers of Interest to instruct them on: (i) the amounts to be invoiced to the Group for work or supplies allegedly provided by those Suppliers of Interest, (ii) the description that should be included in the invoices for that work or supply, and (iii) the projects to be charged. As a result of the Phase I Investigation, E&Y identified nineteen Suppliers of Interest. The Trustee understands that Solano died in January 2017.

3. On May 30, 2019, the Court authorized the Monitor and its counsel Norton Rose Fulbright Canada LLP to undertake a further investigation (the “Phase II Investigation”). The purpose of the Phase II Investigation was to verify the concerns regarding transactions with the Suppliers of Interest and to investigate the scope and details of these transactions.
4. The findings from the Phase II Investigation were provided in the Monitor’s Investigation Report. That Report sets out that the Group paid in excess of \$80 million to the Suppliers of Interest for no consideration.
5. The Receiver and the Monitor entered a protocol regarding, *inter alia*, the sharing of information related to the Phase II Investigation (the “Protocol”). On September 18, 2019, the Court approved the Protocol. The Protocol is subject to a sealing order. A copy of the Protocol is attached as Confidential Appendix “1”.

## 2.2 FC Investigation

1. As a significant portion of the transactions identified by E&Y involve Forma Con, KSV (in its then capacity as Receiver) determined it should conduct its own investigation. In order to minimize costs, KSV met with E&Y to obtain an overview of its investigation and to request the documents required for the FC Investigation in E&Y’s possession. On January 7, 2020, E&Y provided the Trustee with the following, which was sourced from Group’s records:
  - a. copies of cheques issued by Forma Con to the Suppliers of Interest (the “Cheques”);
  - b. accounting records for the Suppliers of Interest extracted from the Group’s accounting system (the “Supplier History Reports”); and
  - c. a copy of Solano’s e-mail mailbox.<sup>1</sup>

## 2.3 Results of the FC Investigation

1. The FC Investigation identifies that between 2011 to 2017, Forma Con paid Suppliers of Interest approximately \$34 million for no consideration.
2. The statutory review period under the BIA is December 19, 2014 to December 19, 2019 under the BIA (the “Review Period”). Of the payments to the Suppliers of Interest, approximately \$11.4 million occurred during the Review Period. The parties who received monies during this period are referred to herein as the “Supplier Respondents”.

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<sup>1</sup>KSV and its counsel, Torys LLP, agreed not to review any potentially privileged emails in Solano’s email account.



3. A summary of the transactions involving the Supplier Respondents is provided in the table below.

<b>\$000s, unaudited</b>	<b>Payments Before 12/19/2014</b>	<b>Payments After 12/19/2014</b>	<b>Total Payments</b>
<b>Supplier Respondents</b>			
Clearway Haulage	-	968	968
MMC General Contracting	-	2,795	2,795
MTEC Construction	3,859	5,260	9,119
Strada Haulage	109	1,711	1,820
2104664 Ontario Inc.	170	90	260
2304288 Ontario Inc.	565	543	1,108
	4,703	11,367	16,070
<b>Other Suppliers of Interest</b>			
2299726 Ontario Inc.	14,134	-	14,134
2104661 Ontario Inc.	1,516	-	1,516
B.I.C. Haulage	37	-	37
Terra Haulage	832	-	832
TP Inc	229	-	229
Vaughan Haulage	639	-	639
GGC Gem General Contracting	362	-	362
GH Gem Haulage	91	-	91
Gem Stone	249	-	249
ABC Masonry	58	-	58
	18,147	-	18,147
<b>Total</b>	<b>22,850</b>	<b>11,367</b>	<b>34,217</b>

4. As reported in the Monitor's Investigation Report and based on discussions with Steven Aquino, the current President of BCCL and formerly the Vice President of Operations of BCCL, the Trustee understands that none of the Suppliers of Interest provided goods or services to Forma Con.
5. Corporate profile reports for each of the Supplier Respondents are attached as Appendix "A". The Receiver has enclosed these reports as they show that Coccia-Canderle and Dipede were officers and directors of certain of the Supplier Respondents. The reports also show the registered addresses of all of the Supplier Respondents, many of which are common. For completeness, the Receiver has included all of the corporate profile reports for the Supplier Respondents.

## 2.4 The Impugned Transactions

1. Substantially all the transactions follow a similar pattern:

Step 1: the process is initiated with an email from Solano to Caruso or Ana advising a Supplier of Interest to invoice Forma Con, the amount to be invoiced<sup>2</sup>, the project to be invoiced and the description of the work to be included on the invoice. For example:

MS Michael Solano  
 To: Marco Caruso  
 Mon 2015-04-06 2:25 PM

# Company to Bondfield  
 Re: Hawkesbury Hospital  
 To cut and remove existing slab on grade. Excavate and prepare existing base for new rebar and slab.  
 \$223,000

Haulage Company to Bondfield  
 Re: Cambridge Hospital  
 To excavate and provide labour to underpin existing walls.  
 \$126,000

# Company to Forma-Con  
 Re: Sheridan College  
 To supply, install and weld bolts to piles to fasten forms against shoring. Fabricate exterior wall forms and install on site.  
 \$281,000

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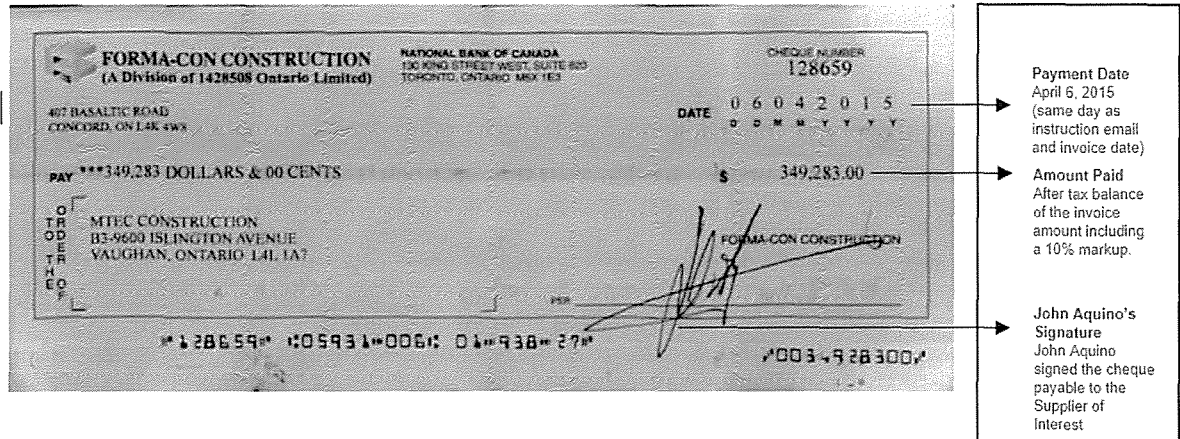
Michael Solano  
 IT Manager

<b>Date of Instructions</b>	April 6, 2015, 14:25
<b>Construction Project</b>	Sheridan College
<b>Description of work performed</b>	
<b>Invoice Amount</b>	This amount is before a 10% markup.
	\$281,000
	x 110%
	<b>=\$309,100</b>

<sup>2</sup> In all cases, the amount invoiced either is the amount in the email or the amount in the email with a 10% markup.



Step 3: the invoice would be paid by cheque immediately following issuance of the invoice. The cheques were signed by John Aquino or Solano.



2. The Trustee has located email correspondence for 82% of the Impugned Transactions.
3. The balance of the transactions is supported by cheques to the Supplier Respondents. The Trustee does not have an invoice or email correspondence for these transactions; however, it understands based on conversations with the Monitor and Steve Aquino that none of the suppliers provided any services to Forma Con.
4. Examples of the above transactions are provided in Appendix “B” for each Supplier Respondent<sup>3</sup>.

## 2.5 Financial Irregularities in Transactions

1. The Trustee’s findings are consistent with the Monitor’s findings, as follows:
  - *Transactions with Supplier Respondents provided no business purposes:* the Trustee understands from conversations with Steven Aquino, the Monitor’s Investigation Report and a review of Forma Con’s books and records, that none of the Suppliers of Interest provided goods or services to Forma Con.
  - *Controls and standard payment practices were not followed:* the invoices from the Suppliers of Interest were, on average, paid by Forma Con in 1.3 days. The Trustee understands from the Monitor’s Investigation Report that the Group’s usual payment terms were 30 to 90 days.

<sup>3</sup> For two of the Supplier Respondents, 2104664 Ontario Inc. and 2304288 Ontario Inc., only copies of cheques issued to the Supplier Respondents have been provided as no email correspondence can be located.

- *Supplier Respondents are connected to each other and to the Group's representatives through the Individual Respondents:* as reflected in the Monitor's Investigation Report, many of the Supplier Respondents share the same addresses, phone numbers and bank accounts. For example, Caruso delivered falsified invoices to Forma-Con on behalf of at least three different Supplier Respondents, which invoices accounted for approximately 70% of the Impugned Transactions. Ana, another Individual Respondent, sent invoices on behalf of a Supplier Respondent. Coccia-Canderle is listed as a director on the corporate profiles of certain of the Supplier Respondents (MTEC Construction, MMC General Contracting and Strada Haulage). Dipede is listed as a director on the corporate profiles of 2304288 Ontario Inc. ("230"), a Supplier Respondent.

### 3.0 Trustee's Preliminary Conclusions

1. The Trustee believes it is appropriate to commence an Application against each of the Respondents in connection with the Impugned Transactions on the basis that the transfers to the Supplier Respondents were transfers at undervalue that are subject to Section 96 of the BIA.

#### 3.1 Section 96 of the BIA

1. Section 96 of the BIA states:

*96 (1) On application by the trustee, a court may declare that a transfer at undervalue is void as against...the trustee — or order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if...*

*(b) the party was not dealing at arm's length with the debtor and*

*(i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy, or*

*(ii) the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and*

*(A) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or*

*(B) the debtor intended to defraud, defeat or delay a creditor.*

2. A 'transfer at undervalue' is defined in the BIA as "a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor";

3. A party is privy to a transfer at undervalue if they (i) did not deal at arm's length with any party to the transfer; and (ii) by reason of the transfer, directly or indirectly received a benefit or caused a benefit to be received by another person.
4. The Trustee believes the proposed Application against the Respondents satisfies the criteria required to obtain a remedy in this case.

**3.1.1 The transfers to the Supplier Respondents were transfers at undervalue.**

1. The invoiced goods and services described in the Impugned Transactions were never provided by the Supplier Respondents. Forma Con did not receive any consideration in return for its payments to the Supplier Respondents.

**3.1.2 The transfers to the Supplier Respondents were non-arm's length transfers.**

1. Forma Con and the Supplier Respondents were not dealing at arm's length. The invoices for the transactions appear to have been fabricated by Supplier Respondents at the direction of the Group's management. The Monitor's Investigation Report reflects that the Suppliers of Interest made material payments to Individual Respondents.

**3.1.3 Transfers during the five year "look back" period.**

1. \$11.4 million was transferred to the Supplier Respondents during the Review Period. This amount may increase subject to further review and investigation.

**3.1.4 The transfers to the Supplier Respondents were undertaken with an intention to defeat, delay or defraud creditors.**

1. The Impugned Transactions could only reasonably have been undertaken with the intent of defeating Forma Con's creditors. In particular,
  - i. the transactions were non-arm's length;
  - ii. the consideration was grossly inadequate;
  - iii. the transactions were concealed and included invoices containing false statements about consideration received by Forma Con;
  - iv. the transactions were undertaken with unusual haste;
  - v. in certain cases, Supplier Respondents were provided with names similar to existing suppliers of the Group in order to make them appear legitimate;
  - vi. the parties engaged in the transactions would reasonably have thought that these transactions would have a material adverse impact on the Forma Con's ability to eventually pay its creditors; and
  - vii. it appears that Individual Respondents who participated in this scheme received a direct or indirect benefit from the scheme.

**3.1.5 John Aquino, Caruso, Solano, Ana, Coccia-Canderle and Dipede were privy to the Impugned Transactions.**

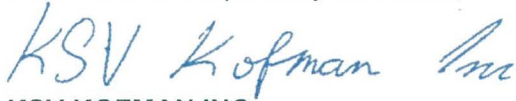
1. Each of John Aquino, Caruso, Ana, Coccia-Canderle and Dipede did not deal at arm's length with a party to the Impugned Transactions:
  - i. John Aquino was the President of Forma Con at the relevant time and was a 33% shareholder of the Group;
  - ii. Solano was John Aquino's relative and worked in the IT department. He had access to the systems and the knowledge of the business necessary to give effect to the Impugned Transactions. He had the trust of John Aquino;
  - iii. Caruso and Ana received instructions from Forma Con on the amounts to be paid to the Supplier Respondents through fictitious invoices that appear to have been coordinated by Solano; and
  - iv. Coccia-Canderle was a director listed on the corporate profiles of certain of the Supplier Respondents (MTEC Construction, MMC General Contracting and Strada Haulage) and the Monitor has reported that Coccia-Canderle is a signatory on bank accounts of some of the Suppliers of Interest.
  - v. Dipede was the former CFO of the Group at the relevant time. He was also a director listed on the corporate profile of 230, a Supplier Respondent. The Monitor has advised that Dipede is a signatory on the 230 bank account .
2. The evidence available to the Trustee indicates that each of John Aquino, Solano, Caruso and Ana had a role in causing the Impugned Transactions:
  - i. John Aquino signed cheques for Forma Con's payment of a significant portion of the invoices issued by the Supplier Respondents;
  - ii. Solano was a relative of John Aquino and appears to have been an active participant in the invoicing scheme – he directed the Supplier Respondents with respect to invoicing and signed cheques payable to Supplier Respondents;
  - iii. Caruso delivered falsified invoices to Forma-Con on behalf of at least three different Supplier Respondents, which invoices accounted for approximately 70% of the Impugned Transactions; and
  - iv. Ana delivered falsified invoices to Forma Con from one of the Supplier Respondents totalling approximately \$2.8 million.

#### 4.0 Recoveries

1. The Application is pursued for the benefit of the estate and all proceeds recovered by the Trustee shall be brought into the estate. The proceeds will be used for appropriate distribution under the BIA, subject to the rights of recovery of secured creditors, who may benefit from any proceeds of the application.

\* \* \*

All of which is respectfully submitted,



**KSV KOFMAN INC.,  
SOLELY IN ITS CAPACITY AS TRUSTEE AND  
RECEIVER AND MANAGER OF  
10338083 ONTARIO INC AND 1087507 ONTARIO LIMITED  
AND NOT IN ITS PERSONAL CAPACITY**



This is Exhibit <sup>" 19 "</sup> referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022




A commissioner for taking Affidavits

Transaction date: 2015-09-14 - Cheque No: 130711 - Amount: \$ 134,244.00





Transaction date: 2015-09-14 - Cheque No: 130711 - Amount: \$ 134,244.00

<p><b>FORMA-CON CONSTRUCTION</b> (A Division of 1428508 Ontario Limited)</p> <p>407 BASALTIC ROAD CONCORD, ON L4K 4W8</p> <p><b>PAY</b> ***134,244 DOLLARS &amp; 00 CENTS</p> <p><b>TO THE ORDER OF</b> MMC GENERAL CONTRACTING 45 KINGSBRIDGE, ONTARIO MISSISSAUGA, ONTARIO L5R 3K4</p>	<p><b>NATIONAL BANK OF CANADA</b> 130 KING STREET WEST, SUITE 500 TORONTO, ONTARIO M5X 1E3</p> 	<p>CHEQUE NUMBER 130711</p> <p>DATE 1 1 0 9 2 0 1 5 D D M M Y Y Y Y</p> <p>\$ 134,244.00</p> <p>FORMA-CON CONSTRUCTION</p> <p>PER </p>	<p>18912-004 06 THE TORONTO DOMINION BANK</p> <p>SEP 11 2015</p> <p>TEXT 26150914 407 HENRI BOUDRIER ROAD TORONTO ONTARIO M4M 1L9 0100329153 18912-004</p>	<p>Endorsement - Signature or Stamp Endossement - Signature ou timbre</p> <p>134,244.00 100711</p> <p><b>BACK VERSO</b> OF CANADA TORONTO 4206044285</p> <p>1891-0202959</p>	<p>PRINTER ID # 1005 - B</p> <p>INFORMATION: CANADA BY MAIL - 1005 - B GENERAL ENQUIRY: 1-800-387-5252 PRINT BOOK CONTROL: 1-800-387-5252 CANADIAN POST: 1-800-387-5252 FINANCIAL SERVICES: 1-800-387-5252 CANADIAN POST: 1-800-387-5252</p>
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# 130711 1059310061 01938 27 #

0013424400

Transaction date: 2015-09-14 - Cheque No: 130712 - Amount: \$ 113,113.00

<b>FORMA-CON CONSTRUCTION</b> (A Division of 1428508 Ontario Limited) 407 BASALTEC ROAD CONCORD, ON L4K 4W3		NATIONAL BANK OF CANADA 130 KING STREET WEST, SUITE 800 TORONTO, ONTARIO M5X 1E3		CHEQUE NUMBER <b>130712</b>
<b>PAY</b> ***113,113 DOLLARS & 00 CENTS		<b>DATE</b> 1 1 0 9 2 0 1 5 D D M M Y Y Y Y		\$ 113,113.00
<b>TO THE ORDER OF</b> MMC GENERAL CONTRACTING 43 KINGSBRIDGE, ONTARIO MISSISSAUGA, ONTARIO L3R 3K4		FORMA-CON CONSTRUCTION		Endorsement - Signature or Stamp Endossement - Signature ou timbre
MICR: ⑆130712⑆ ⑆05931⑆006⑆ ⑆1⑆938⑆27⑆		MICR: ⑆001314300⑆		PRINTER ID # 1005 - B 1891-0202959

Transaction date: 2015-09-14 - Cheque No: 130712 - Amount: \$ 113,113.00

**FORMA-CON CONSTRUCTION**  
(A Division of 1428508 Ontario Limited)

407 BASALTIC ROAD  
CONCORD, ON L4K 4W8

**NATIONAL BANK OF CANADA**  
130 KING STREET WEST, SUITE 620  
TORONTO, ONTARIO M5X 1E3

CHEQUE NUMBER  
**130712**

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MMC GENERAL CONTRACTING  
45 KINGSBRIDGE, ONTARIO  
MISSISSAUGA, ONTARIO  
L5R 3K4

PER *[Signature]*

FORMA-CON CONSTRUCTION

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18912-004  
THE TORONTO DOMINION BANK

SEP 11 2015

5101 RUTHERFORD ROAD  
VAUGHAN, ONTARIO L4H 0A9

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TORONTO ONTARIO  
0100329154

BACK VERSO  
NATIONAL BANK OF CANADA TORONTO  
4206444392

1891-6202959

Printer ID # 1005 - B

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QUALITY IMPROVEMENT: MARKS & FILLS/REWORK PRINT LOCK COLOURS, COLOURS/PAPERWORK, PLAINNESS, MARKINGS, MARKS & FILLS/REWORK PRINT LOCK

Endorsement - Signature or Stamp  
Endossement - Signature ou timbre

This is Exhibit <sup>20</sup> referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



A commissioner for taking Affidavits

Ernst & Young Inc. v. Aquino, 2021 ONSC 527, 2021 CarswellOnt 4221

2021 ONSC 527, 2021 CarswellOnt 4221, 330 A.C.W.S. (3d) 473, 88 C.B.R. (6th) 60

**Most Negative Treatment:** Check subsequent history and related treatments.

2021 ONSC 527

Ontario Superior Court of Justice

Ernst & Young Inc. v. **Aquino**

2021 CarswellOnt 4221, 2021 ONSC 527, 330 A.C.W.S. (3d) 473, 88 C.B.R. (6th) 60

**ERNST & YOUNG INC., in its capacity as Court-Appointed Monitor of Bondfield Construction Company Limited (Applicant) and JOHN AQUINO, MARCO CARUSO, GIUSEPPE ANASTASIO a.k.a. JOE ANA, LUCIA COCCIA a.k.a. LUCIA CANDERLE, THE ESTATE OF MICHAEL SOLANO, GIOVANNI ANTHONY SIRACUSA a.k.a. JOHN SIRACUSA, 2483251 ONTARIO CORP. a.k.a. CLEARWAY HAULAGE, 2420595 ONTARIO LTD. a.k.a. STRADA HAULAGE, 2304288 ONTARIO INC., 2466601 ONTARIO INC. a.k.a. MMC CONTRACTING, 2420570 ONTARIO LTD. a.k.a. MTEC CONSTRUCTION, TIME PASSION, INC. and RCO GENERAL CONTRACTING LTD. (Respondents)**

KSV KOFMAN INC. in its capacity as Trustee-in-Bankruptcy of 1033803 ONTARIO INC. and 1087507 ONTARIO LIMITED (Applicant) and **JOHN AQUINO**, MARCO CARUSO, GIUSEPPE ANASTASIO a.k.a. JOE ANA, THE ESTATE OF MICHAEL SOLANO, LUCIA COCCIA a.k.a. LUCIA CANDERLE, 2483251 ONTARIO CORP. a.k.a. CLEARWAY HAULAGE, MMC GENERAL CONTRACTING, MTEC CONSTRUCTION, STRADA HAULAGE, 2104664 ONTARIO INC., and 2304288 ONTARIO INC. (Respondents)

Dietrich J.

Heard: September 14-16, 22, 2020

Judgment: March 19, 2021

Docket: CV-19-630908-00CL, CV-20-00636754-00CL

Counsel: Alan Merskey, Evan Cobb, for Applicant  
 Michael Citak, Chris Junior, for Respondents, **John Aquino** and 2304288 Ontario Inc.  
 George Corsianos, for Respondent, Marco Caruso  
 Terry Corsianos, for Respondents, Giuseppe Anastasio, a.k.a. Joe Ana and Lucia Coccia, a.k.a. Lucia Canderle  
 Scott A. Bomhof, Jeremy Opolsky, Craig Gilchrist, for Applicant  
 Brian Belmont, for Respondent, 2104664 Ontario Inc.

Subject: Civil Practice and Procedure; Corporate and Commercial; Evidence; Insolvency; Public

#### Related Abridgment Classifications

Bankruptcy and insolvency

XI Avoidance of transactions prior to bankruptcy

XI.7 Fraudulent and illegal transactions

XI.7.b Miscellaneous

Bankruptcy and insolvency

XI Avoidance of transactions prior to bankruptcy

XI.10 Miscellaneous

Business associations

I Nature of business associations

I.3 Nature of corporation

## I.3.b Distinct existence

## I.3.b.i From owner

## I.3.b.i.A General principles

**Headnote**

Bankruptcy and insolvency --- Avoidance of transactions prior to bankruptcy — Fraudulent and illegal transactions — Miscellaneous

Group of construction companies was in financial trouble — Construction company BCCL commenced proceedings under [Companies' Creditors Arrangement Act](#) and monitor was appointed — Trustee in bankruptcy appointed regarding construction company FC — Monitor and trustee discovered that BCCL and FC had illegitimately paid out tens of millions of dollars as part of false invoicing schemes over number of years prior to BCCL commencing proceedings and prior to FC's bankruptcy — At BCCL, monitor also discovered fund cycling scheme whereby president had used his holding company to inject capital at end of year to make BCCL appear to stakeholders to be financially stronger than it was — Monitor brought application for declaration that transfers made out of BCCL as part of false invoicing scheme and fund cycling scheme were transfers at undervalue for which no consideration was received by group, and that those who benefited from schemes were jointly and severally liable, and trustee brought application for similar declaration regarding transfers made out of FC, and for order regarding fund cycling — Applications granted in part — Payments by BCCL as part of false invoicing scheme were transfers at undervalue, for which monitor was entitled to compensation from those who benefited, and payments made by FC were transfers at undervalue, for which trustee was entitled to similar compensation — Invoices were created for services or materials that were never delivered to BCCL and FC and they received no consideration, yet money flowed to construction group and other respondents — President of BCCL engaged in clandestine scheme that would hide from creditors fact that tens of millions of dollars were paid out of BCCL under guise of job costs, which were not job costs at all, but rather payments to president himself and others who assisted him in deception — Value to BCCL of impugned transactions relating to false invoicing scheme was nil, and it was not shown that FC received any valuable services or materials from impugned transactions, so that their value was nil — Entities in transactions were acting collaboratively to carry out scheme and were not arm's length — Transfers made with intent to defraud, defeat or delay creditors — Transfers were made by BCCL and FC, in secret, in haste, to non-arm's length persons, and without consideration or innocent explanation — Company's financial health does not preclude finding of fraudulent intent; even if BCCL and FC were paying their respective current suppliers for period of time, this did not sanitize fraud — Participation and awareness of impugned transactions by all persons involved was not required for finding of fraud — President engaged in actions to avoid BCCL's and FC's obligations and defeat their creditors — Given that construction group had outstanding debts, including substantial loan from primary lender and shareholder loans, at time of transfers, there were creditors toward whom BCCL's and FC's intent to defraud could be directed — Monitor did not adduce sufficient evidence to show that amounts transferred from BCCL in fund cycling system were transfers at undervalue for which there was no consideration — Parties or privies to transfers were ordered to pay, on joint and several liability basis, \$21,807,693 to monitor, being difference between monies paid by BCCL to supplier respondents and value of services or materials provided by them to BCCL, which was nil — Liability of C limited to \$88,008.

Business associations --- Nature of business associations — Nature of corporation — Distinct existence — From owner — General principles

Group of construction companies was in financial trouble — Construction company BCCL commenced proceedings under [Companies' Creditors Arrangement Act](#) and monitor was appointed — Trustee in bankruptcy appointed regarding construction company FC — Monitor and trustee discovered that BCCL and FC had illegitimately paid out tens of millions of dollars as part of false invoicing schemes over number of years prior to BCCL commencing proceedings and prior to FC's bankruptcy — At BCCL, monitor also discovered fund cycling scheme whereby president had used his holding company to inject capital at end of year to make BCCL appear to stakeholders to be financially stronger than it was — Monitor brought application for declaration that transfers made out of BCCL as part of false invoicing scheme and fund cycling scheme were transfers at undervalue for which no consideration was received by group, and that those who benefited from schemes were jointly and severally liable, and trustee brought application for similar declaration regarding transfers made out of FC, and for order regarding fund cycling — Applications granted in part — Payments by BCCL as part of false invoicing scheme were transfers at undervalue, for which monitor was entitled to compensation from those who benefited, and payments made by FC were transfers at undervalue, for which trustee was entitled to similar compensation — Actions of president could be attributed to corporations, even though they were not intended to benefit BCCL and FC and they did not so do — President's



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areas of responsibility included engaging with suppliers and overseeing provision of services and materials — Given that [Bankruptcy and Insolvency Act](#) is concerned with providing proper redress to creditors, intention of debtor in s. 96 of Act should be interpreted liberally to include intention of individuals in control of corporation, regardless of whether those individuals had any intent to defraud corporation itself.

Bankruptcy and insolvency --- Avoidance of transactions prior to bankruptcy — Miscellaneous

Group of construction companies was in financial trouble — Construction company BCCL commenced proceedings under [Companies' Creditors Arrangement Act](#) and monitor was appointed — Trustee in bankruptcy appointed regarding construction company FC — Monitor and trustee discovered that BCCL and FC had illegitimately paid out tens of millions of dollars as part of false invoicing schemes over number of years prior to BCCL commencing proceedings and prior to FC's bankruptcy — At BCCL, monitor also discovered fund cycling scheme whereby president had used his holding company to inject capital at end of year to make BCCL appear to stakeholders to be financially stronger than it was — Monitor brought application for declaration that transfers made out of BCCL as part of false invoicing scheme and fund cycling scheme were transfers at undervalue for which no consideration was received by group, and that those who benefited from schemes were jointly and severally liable, and trustee brought application for similar declaration regarding transfers made out of FC, and for order regarding fund cycling — Applications granted in part — Payments by BCCL as part of false invoicing scheme were transfers at undervalue, for which monitor was entitled to compensation from those who benefited, and payments made by FC were transfers at undervalue, for which trustee was entitled to similar compensation — Requirements for fraud identified in [Fraudulent Conveyances Act](#) are applicable to [Bankruptcy and Insolvency Act](#), with exception related to term "or other".

**Table of Authorities****Cases considered by *Dietrich J.*:**

*Bank of Montreal v. EL04 Inc.* (2012), 2012 ONCA 80, 2012 CarswellOnt 1323, 287 O.A.C. 286, 88 C.B.R. (5th) 261 (Ont. C.A.) — referred to

*Bearsfield Developments Inc. v. McNabb* (2016), 2016 ONSC 6294, 2016 CarswellOnt 15843, 41 C.B.R. (6th) 310 (Ont. S.C.J.) — considered

*Christine DeJong Medicine Professional Corp. v. DBDC Spadina Ltd.* (2019), 2019 SCC 30, 2019 CSC 30, 2019 CarswellOnt 7557, 2019 CarswellOnt 7558, 69 C.B.R. (6th) 1, 89 B.L.R. (5th) 1, 48 E.T.R. (4th) 1, 435 D.L.R. (4th) 379, [2019] 2 S.C.R. 530 (S.C.C.) — considered

*Commerce Capital Mortgage Corp. v. Jemmett* (1981), 37 C.B.R. (N.S.) 59, 1981 CarswellOnt 147 (Ont. H.C.) — distinguished

*DBDC Spadina Ltd. v. Walton* (2018), 2018 ONCA 60, 2018 CarswellOnt 1571, 33 E.T.R. (4th) 173, 56 C.B.R. (6th) 173, 419 D.L.R. (4th) 409, 78 B.L.R. (5th) 183 (Ont. C.A.) — considered

*Deloitte & Touche v. Livent Inc. (Receiver of)* (2017), 2017 SCC 63, 2017 CSC 63, 2017 CarswellOnt 20138, 2017 CarswellOnt 20139, 416 D.L.R. (4th) 32, 55 C.B.R. (6th) 1, 71 B.L.R. (5th) 175, 43 C.C.L.T. (4th) 1, [2017] 2 S.C.R. 855 (S.C.C.) — considered

*Dhawan v. Shails et. al.* (2018), 2018 ONSC 7116, 2018 CarswellOnt 19811, 85 B.L.R. (5th) 294 (Ont. Div. Ct.) — referred to

*Fleming v. Edwards* (1896), 23 O.A.R. 718 (Ont. C.A.) — distinguished

*Golden Oaks Enterprises Inc. (Trustee of) v. Lalonde* (2016), 2016 ONSC 5313, 2016 CarswellOnt 14742, 133 O.R. (3d) 513 (Ont. S.C.J.) — referred to

*Indcondo Building Corp. v. Sloan* (2014), 2014 ONSC 4018, 2014 CarswellOnt 10946, 121 O.R. (3d) 160, 16 C.B.R. (6th) 220 (Ont. S.C.J.) — referred to

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*Indcondo Building Corp. v. Sloan* (2015), 2015 ONCA 752, 2015 CarswellOnt 16689, 31 C.B.R. (6th) 110 (Ont. C.A.) — referred to

*Jonas v. McConnell* (2014), 2014 ONSC 6169, 2014 CarswellOnt 15483, 18 C.B.R. (6th) 47, 35 B.L.R. (5th) 304 (Ont. S.C.J.) — followed

*Juhasz (Trustee of) v. Cordeiro* (2015), 2015 ONSC 1781, 2015 CarswellOnt 4744, 24 C.B.R. (6th) 69 (Ont. S.C.J.) — referred to

*Marzetti v. Marzetti* (1994), [1994] 7 W.W.R. 623, (sub nom. *Marzetti v. Marzetti (Bankrupt)*) 155 A.R. 340, (sub nom. *Marzetti v. Marzetti (Bankrupt)*) 73 W.A.C. 340, 116 D.L.R. (4th) 577, [1994] 2 S.C.R. 765, 5 R.F.L. (4th) 1, 26 C.B.R. (3d) 161, 20 Alta. L.R. (3d) 1, (sub nom. *Marzetti v. Marzetti (Bankrupt)*) 169 N.R. 161, 1994 CarswellAlta 346, [1998] B.P.I.R. 732, 1994 CarswellAlta 942 (S.C.C.) — considered

*Montor Business Corp. (Trustee of) v. Goldfinger* (2013), 2013 ONSC 6635, 2013 CarswellOnt 14983, 8 C.B.R. (6th) 200 (Ont. S.C.J. [Commercial List]) — considered

*Montor Business Corp. (Trustee of) v. Goldfinger* (2016), 2016 ONCA 406, 2016 CarswellOnt 8324, 36 C.B.R. (6th) 169, (sub nom. *Summit Glen Waterloo/2000 Developments Inc. (Bankrupt), Re*) 351 O.A.C. 241, 58 B.L.R. (5th) 243 (Ont. C.A.) — considered

*National Telecommunications Inc., Re* (2017), 2017 ONSC 1475, 2017 CarswellOnt 3184, 45 C.B.R. (6th) 181 (Ont. S.C.J. [Commercial List]) — considered

*National Telecommunications v. Stalt* (2018), 2018 ONSC 1101, 2018 CarswellOnt 5360, 59 C.B.R. (6th) 263 (Ont. S.C.J.) — considered

*People's Department Stores Ltd. (1992) Inc., Re* (2004), 2004 SCC 68, 2004 CarswellQue 2862, 2004 CarswellQue 2863, (sub nom. *Peoples Department Stores Inc. (Trustee of) v. Wise*) 244 D.L.R. (4th) 564, (sub nom. *Peoples Department Stores Inc. (Bankrupt) v. Wise*) 326 N.R. 267 (Eng.), (sub nom. *Peoples Department Stores Inc. (Bankrupt) v. Wise*) 326 N.R. 267 (Fr.), 4 C.B.R. (5th) 215, 49 B.L.R. (3d) 165, [2004] 3 S.C.R. 461, 2004 CSC 68 (S.C.C.) — considered

*Purcaru v. Seliverstova* (2015), 2015 ONSC 6679, 2015 CarswellOnt 16478, 69 R.F.L. (7th) 388 (Ont. S.C.J.) — referred to

*R. v. McNamara* (1985), 45 C.R. (3d) 289, (sub nom. *Canadian Dredge & Dock Co. v. R.*) 9 O.A.C. 321, (sub nom. *Canadian Dredge & Dock Co. v. R.*) 19 C.C.C. (3d) 1, (sub nom. *Canadian Dredge & Dock Co. v. R.*) 19 D.L.R. (4th) 314, (sub nom. *Canadian Dredge & Dock Co. v. R.*) 59 N.R. 241, (sub nom. *R. v. Canadian Dredge & Dock Co.*) [1985] 1 S.C.R. 662, 1985 CarswellOnt 939, 1985 CarswellOnt 96 (S.C.C.) — considered

*Ramgotra (Trustee of) v. North American Life Assurance Co.* (1996), [1996] 3 W.W.R. 457, 37 C.B.R. (3d) 141, 10 C.C.P.B. 113, 13 E.T.R. (2d) 1, [1996] 1 C.T.C. 356, (sub nom. *Ramgotra (Bankrupt), Re*) 193 N.R. 186, (sub nom. *Ramgotra (Bankrupt), Re*) 141 Sask. R. 81, (sub nom. *Ramgotra (Bankrupt), Re*) 114 W.A.C. 81, (sub nom. *Royal Bank v. North American Life Assurance Co.*) 132 D.L.R. (4th) 193, (sub nom. *Royal Bank v. North American Life Assurance Co.*) [1996] 1 S.C.R. 325, (sub nom. *Royal Bank v. North American Life Assurance Co.*) 96 D.T.C. 6157, 1996 CarswellSask 212F, 1996 CarswellSask 418 (S.C.C.) — considered

*Silbernagel, Re* (2006), 2006 CarswellOnt 2523, 20 C.B.R. (5th) 155, 81 O.R. (3d) 152 (Ont. S.C.J.) — considered

*Urbancorp Toronto Management Inc. (Re)* (2019), 2019 ONCA 757, 2019 CarswellOnt 15220, 74 C.B.R. (6th) 23 (Ont. C.A.) — considered

**Statutes considered:**

*Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

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Generally — considered

s. 2 “creditor” — referred to

s. 2 “transfer at undervalue” — referred to

s. 4 — referred to

s. 4(4) — referred to

s. 95 — considered

s. 96 — considered

s. 96(1)(b) — referred to

s. 96(1)(b)(ii) — referred to

s. 96(1)(b)(ii)(B) — considered

s. 96(2) — considered

*Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36

Generally — considered

s. 36.1 [en. 2007, c. 36, s. 78] — referred to

*Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29

Generally — considered

APPLICATIONS by monitor and trustee for order that transactions were undervalued and related relief.

***Dietrich J.:***

## OVERVIEW

1 Bondfield Construction Company Limited (“BCCL”) was a family-owned construction company that took on large scale construction projects in the Greater Toronto Area and elsewhere, such as the expansion and redevelopment of St. Michael’s Hospital.

2 Its affiliate 1033803 Ontario Inc., commonly known as **Forma-Con** Construction (“**Forma-Con**”), was in the concrete forming business. BCCL and **Forma-Con** are part of the Bondfield Group of Companies.

3 The Bondfield Group of Companies (“Bondfield Group”) was a full-service group of construction companies operating in the Greater Toronto Area and Southern Ontario since the mid-1980’s. Prior to its insolvency, the Bondfield Group was operated by the **Aquino** family. Ralph **Aquino** (“Ralph”) founded the Bondfield Group and was joined in the family business first by his son **John Aquino** in 1994, and later by son Steven **Aquino** (“Steven”) in 2000.

4 By 2018, the Bondfield Group was in serious financial trouble. BCCL commenced *CCAA* proceedings on April 3, 2019 and this court appointed the applicant Ernst & Young Inc. (“EY”) as Monitor of BCCL and certain of its affiliates. On December 19, 2019, this court appointed the applicant KSV Restructuring Inc. as the trustee in bankruptcy of **Forma-Con** (the “Trustee”).

5 Following their respective appointments, each of the Monitor and the Trustee discovered that BCCL and **Forma-Con** had illegitimately paid out tens of millions of dollars. These payments were made in false invoicing schemes over a number

of years prior to BCCL commencing *CCAA* proceedings and prior to **Forma-Con's** bankruptcy.

6 At BCCL, the Monitor also discovered what it describes as a “fund cycling scheme.” In this alleged scheme, the respondent **John Aquino**, the then president of BCCL, would use his holding company to inject capital into BCCL. He would make these capital injections at the end of a year so that BCCL would appear to its stakeholders to be financially stronger than it was. He would then arrange for the injected capital to be returned to his holding company early in the following year. The Monitor asserts that the bulk of the funds comprising the capital injections were funds transferred from BCCL to **John Aquino** or his holding company at undervalue.

7 The Monitor seeks a declaration that the transfers made out of BCCL as part of the false invoicing scheme and the fund cycling scheme, during the relevant period, were transfers at undervalue for which Bondfield received no consideration. It also seeks a declaration that those who benefited from the schemes are jointly and severally liable for the amounts transferred.

8 The Trustee seeks a declaration that the transfers made out of **Forma-Con** as part of the false invoicing scheme were transfers at undervalue, for which **Forma-Con** received no consideration. It also seeks a declaration that those who benefited from the scheme are jointly and severally liable for the amounts transferred.

9 Justice Hainey ordered that these two applications, being the Monitor’s application (Court File No. 19-630908-00CL) (the “Bondfield Application”) and the Trustee’s application (Court File No. 20-00636754-00CL) (“**Forma-Con** Application”) be heard at the same time and that the evidence adduced and admitted in one application, unless objected to by a party, would be deemed to be evidence in both applications. This hearing covers both applications.

10 For the reasons that follow, I find that the payments by BCCL during the statutory review period as part of the false invoicing scheme were transfers at undervalue, for which the Monitor is entitled to compensation from those who benefited. I also find that the payments made by **Forma-Con** during the statutory review period as part of the false invoicing scheme were transfers at undervalue, for which the Trustee is entitled to compensation from those who benefited.

11 I will now set out the background facts, the positions of the parties, and the evidence in respect of each of the Bondfield Application and the **Forma-Con** Application, followed by the issues to be determined. The law and analysis will follow as applied to both BCCL and **Forma-Con** in respect of the false invoicing scheme, and as applied to BCCL in respect of the fund cycling scheme.

### ***A. The Bondfield Application***

#### *Background Facts*

12 Ralph is the controlling shareholder of the Bondfield Group. During the period when the alleged schemes were being carried out, **John Aquino** was BCCL’s president and owned 33 percent of the non-voting shares of BCCL. At that time, he was also the principal with primary responsibility and control over BCCL’s finances.

13 As of March 2015, Ralph and Steven were also officers of BCCL. Ralph held the position of CEO and Steven held the position of vice president.

14 The Bondfield Group began to experience liquidity issues in 2015 and 2016 when it expanded its operations by taking on a number of P3 projects. While the Bondfield Group was able to obtain short-term replacement financing to resolve certain of these issues, by 2018 the financial condition of the Bondfield Group had deteriorated. Many subcontractors and other vendors refused to continue to provide services or materials. Progress on several construction projects slowed considerably or came to a standstill. These construction delays exacerbated the Bondfield Group’s financial situation as project owners began to withhold payment on the project receivables. BCCL’s bonding company, Zurich Insurance Company Ltd. (“Zurich”), paid out on a number of claims resulting in some of the subcontractors resuming work and suppliers delivering materials again.

15 In 2018, Zurich engaged EY to review the financial situation of the Bondfield Group. EY reported that the Bondfield

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Group had a cash flow concern. On June 18, 2018, Zurich advised that it would be winding down the Bondfield Group.

16 In October 2018, BCCL's primary lender, Bridging Finance Inc. ("Bridging"), called in its \$80,000,000 loan.

17 **John Aquino's** employment with the Bondfield Group was terminated on October 15, 2018. Steven is now the president of the Bondfield Group.

18 On April 3, 2019, this court granted BCCL's application under the *Companies Creditors Arrangement Act, R.S.C. 1985, c. C-36* (the "CCAA").

19 Following the Monitor's appointment on April 3, 2019, it commenced the Bondfield Application against the respondents therein (the "Bondfield Respondents"), who are alleged to have participated in and benefited from the false invoicing scheme. Insofar as the alleged fund cycling scheme is concerned, the Monitor conceded that the only Bondfield Respondent that benefited was **John Aquino's** personal holding company 2304288 Ontario Inc ("230").

20 The Monitor proceeds pursuant to *section 36.1 of the CCAA* and *section 96 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3* (the "BIA"). The provisions of the *BIA* are modified in the *CCAA* context. The date of the commencement of the *CCAA* proceedings is the first date of the relevant review period (as opposed to the date of the initial bankruptcy event) pursuant to *s. 96*. The *BIA* gives the Monitor the same impeachment powers that may be exercised by a trustee in bankruptcy.

21 Following its appointment, the Monitor conducted a preliminary investigation and reported to this court that it appeared that BCCL had illegitimately transferred amounts to certain of the Bondfield Respondents in an aggregate amount of approximately 35,700,000 CAD and 35,030 USD between April 3, 2014 and April 3, 2019. This period is the five-year statutory period under the *BIA* during which the Monitor may review transfers at undervalue (the "Bondfield review period").

22 The Monitor's report stated that the impugned transactions (the "Bondfield impugned transactions") occurred in one of two ways.

23 One set of transactions involved a false invoicing scheme by which \$21,807,693 was removed from BCCL during the Bondfield review period through false invoices submitted by Bondfield Respondents 2483251 Ontario Corp. a.k.a. Clearway Haulage ("Clearway"), 2420595 Ontario Ltd. a.k.a. Strada Haulage ("Strada"), 2466601 Ontario Inc. a.k.a. MMC Contracting ("MMC"), 2420570 Ontario Ltd. a.k.a. MTEC Construction ("MTEC"), Time Passion, Inc. ("Time Passion"), and RCO General Contracting Inc. ("RCO") (collectively, the "BCCL Supplier Respondents"). The Monitor alleged that the BCCL Supplier Respondents had submitted false invoices to BCCL that were improperly charged to and paid from various BCCL projects.

24 Despite initial denials of any impropriety, eventually, under cross-examination, Bondfield Respondents Mario Caruso ("Caruso"), Giuseppe Anastasio ("Anastasio"), and Lucia Coccia (a.k.a. Lucia Canderle) ("Coccia"), each of whom was involved in operating the BCCL Supplier Respondents, admitted that they did not dispute the Monitor's contention that no value was provided by any of the suppliers identified by the Monitor for any of the transfers underlying these false invoices (not including 230). **John Aquino** made the same admission.

25 However, the Bondfield Respondents, other than the Estate of Michael Solano (the "Solano Estate"), Anthony Siracusa ("Siracusa"), and Time Passion, Inc., which was operated by Siracusa, deny that there was any intent to defraud, defeat or delay creditors of BCCL. The Estate Trustee of the Solano Estate claims to have no knowledge of the BCCL impugned transactions, and Siracusa and Time Passion, Inc. did not respond to the Bondfield Application.

26 The other set of transactions involved an alleged scheme by which funds in excess of \$14,029,369 were transferred from BCCL to 230 for no value. From time to time during the Bondfield review period, at or close to year-end, 230 returned funds to BCCL, on a temporary basis, to create the impression of greater financial strength.

## **B. The *Forma-Con* Application**

*Background Facts*

27 **John Aquino** was at all material times the president and a shareholder of **Forma-Con**.

28 At the time of **Forma-Con's** bankruptcy on December 19, 2019, the Trustee discovered that **Forma-Con** had \$215,000,000 in liabilities, including millions owing to each of BCCL, Bridging, Canada Revenue Agency and the Workplace Safety & Insurance Board. BCCL's surety, Zurich, is a secured creditor of **Forma-Con**.

29 Following the Monitor's delivery of its investigatory report on October 30, 2019, the Trustee undertook its own investigation. It concluded that between 2011 and 2017, **Forma-Con** had paid more than \$34,000,000 to certain suppliers for no consideration, and that \$11,366,890 of that amount (the "**Forma-Con** impugned transactions") was paid to six suppliers during the five years preceding the bankruptcy.

30 The Trustee brings the **Forma-Con** Application against the respondents therein (the "**Forma-Con** Respondents"), which include the six suppliers, five of which are common to the Bondfield Application. They are also alleged to have participated in and benefited from a false invoicing scheme involving **Forma-Con**. The Trustee brings the **Forma-Con** application pursuant to s. 96 of BIA.

31 The six suppliers are the corporate respondents Clearway, MMC, MTEC, Strada, 230 and 2104664 Ontario Inc. (the "**Forma-Con** Supplier Respondents"). The Trustee's investigation also implicated the individual **Forma-Con** Respondents. **John Aquino** was **Forma-Con's** president when the payments were made and signed the majority of the cheques making the payments. Anastasio sent invoices on behalf of MMC to Solano. Caruso sent cheques on behalf of three of the **Forma-Con** Supplier Respondents to Solano. Coccia is listed on the Corporation Profile Reports as a director of three **Forma-Con** Supplier Respondents, and is a signatory on the bank accounts of these companies. Solano emailed to Anastasio and Caruso the details to be included on the invoices and signed cheques associated with the impugned transactions.

32 The **Forma-Con** Supplier Respondents are alleged to have participated in a transfer of an aggregate amount of \$11,367,000 from **Forma-Con** between December 19, 2014 and December 19, 2019 (the "**Forma-Con** review period").

33 The transfers at **Forma-Con** involved an alleged scheme by which funds were removed from **Forma-Con**, during the **Forma-Con** review period, through false invoices submitted by **Forma-Con** Supplier Respondents to, and paid from, various **Forma-Con** projects.

34 The scheme generally followed a pattern whereby Solano would send an email to Caruso or Anastasio with instructions for a **Forma-Con** Supplier Respondent to invoice **Forma-Con**, including the amount to be invoiced, the project to be invoiced, and the description of work to be included. Shortly thereafter, Caruso or Anastasio would send an invoice matching those instructions to Solano, and within hours of sending the invoice, a cheque signed by **John Aquino** or Solano would be issued to pay the invoice. The invoices would purport to be in respect of ongoing **Forma-Con** projects. Some of the **Forma-Con** Supplier Respondents had names similar to legitimate suppliers to the Bondfield Group. **Forma-Con's** controls and standard payment practices were not followed in respect of the **Forma-Con** impugned transactions.

35 Despite initial denials of any impropriety, eventually, under cross-examination, **Forma-Con** Respondents **John Aquino**, Caruso, Anastasio and Coccia admitted that he or she did not dispute the Trustee's contention that no value was provided by any of the suppliers identified by the Trustee with which they had some connection (not including 230). None of the purported services or materials set out in the false invoices relating to those suppliers were in fact provided to **Forma-Con**. Despite their admission, **John Aquino**, Caruso, Anastasio and Coccia deny that there was any intent to defraud, defeat or delay creditors of **Forma-Con**.

36 2104664 Ontario Inc. ("664 Ontario") did not make the same admission. 664 Ontario asserts that it provided value to **Forma-Con** for the amount it was paid based on the invoice it submitted during the **Forma-Con** review period.

37 **John Aquino** personally received payments from 230. He identified 230 as his personal holding company, but offered no explanation or evidence to support his assertion that the payment made by **Forma-Con** to 230 was for valuable consideration.

38 The Estate Trustee of the Solano Estate claims to have no knowledge of the **Forma-Con** impugned transactions.

## POSITIONS OF THE PARTIES

### *The Monitor*

39 The Monitor asserts that the transfers made by BCCL to the BCCL Supplier Respondents through the false invoicing scheme and the transfers to 230 as part of the fund cycling scheme were transfers at undervalue made with the intent to defraud, defeat or delay Bondfield's creditors. These creditors now suffer tens of millions of dollars of loss as a consequence of these transfers, well in excess of the amount of the transfers that took place during the Bondfield review period.

40 The Monitor further asserts that the Bondfield Respondents' argument that the transfers were not made with an intent to defraud, defeat or delay Bondfield creditors, and therefore are not transfers at undervalue, is untenable. The Monitor contends that their conduct not only put in excess of \$35,000,000 in the hands of **John Aquino** for his personal benefit and the benefit of the participants in the scheme, but also misled BCCL's creditors as to the true financial status of BCCL.

41 The Monitor also asserts that the funding for the transfers from BCCL to 230 made through the fund cycling scheme during the Bondfield review period had to have come from wrongful transfers from BCCL outside of the Bondfield review period. The Monitor is not aware of any other potential source of funding available to **John Aquino** or 230 to make these payments. Accordingly, **John Aquino's** capital injections via 230 were payments to BCCL using BCCL's own funds and BCCL's return of those funds to 230 was therefore a transfer for no consideration.

42 The Monitor asserts that all the Bondfield Respondents are jointly and severally liable for the damages owing to BCCL in the false invoicing scheme, but only 230 is liable for damages in the fund cycling scheme.

### *The Trustee*

43 The Trustee asserts that the transfers made through the false invoicing scheme were transfers at undervalue made with the intent to defraud, defeat or delay Bondfield's creditors. It seeks to set those transactions aside and to recover \$11,366,890 for the benefit of **Forma-Con's** creditors.

44 The Trustee's opinion is that the fair market value of services and materials provided by the **Forma-Con** Supplier Respondents to **Forma-Con** is nil. **John Aquino** and the other individual **Forma-Con** Respondents have admitted that this is correct. The Trustee rejects the claim of 664 Ontario that it provided legitimate services. The Trustee asserts that it did not, and that 664 Ontario has not established that **Forma-Con** received any value for its alleged services. Further, the Trustee asserts that extensive refusals by 664's principal on cross-examination have made its evidence impossible to test, resulting in an adverse inference.

45 The Trustee asserts that the false invoicing scheme was conducted in such a surreptitious and fraudulent manner that the only reasonable conclusion can be that the scheme was undertaken with the intent to defraud, defeat or delay creditors. Clandestinely taking money from **Forma-Con** would unavoidably affect the corporate stakeholders, including its creditors, when the scheme was discovered and there were insufficient funds to pay the creditors, who now suffer hundreds of millions of dollars of loss, well in excess of the amount of the transactions that occurred within the **Forma-Con** review period.

### **John Aquino**

46 **John Aquino** asserts that the Monitor and the Trustee are unable to meet their burden of proof under s. 96 of the BIA. He submits that neither of them can show that the impugned transactions, as part of the false invoicing schemes, fall within the scope of the section because the transactions were not made with an intention to defraud, defeat or delay creditors.

47 Regarding the alleged fund cycling scheme, **John Aquino** asserts that the transfers from 230 into BCCL fully offset

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the transfers of funds from BCCL to 230 during the Bondfield review period and that the latter were therefore not transfers at undervalue. He asserts that, in fact, the financial records show that 230 is in a net positive position at the end of the period and that BCCL actually owes 230 \$3,270,631.

48 **John Aquino** further asserts that each of BCCL, **Forma-Con** and the Bondfield Group were in a strong financial position during the respective review periods and that at all relevant times they were able to satisfy their creditors. He states that it was the cash restraints that arose in 2017 and 2018, together with the harmful conduct of Zurich, among other causes, that jeopardized the business of the Bondfield Group. **John Aquino** also asserts that Zurich's damage to BCCL cannot be used to support the contention that the Bondfield impugned transactions that took place years earlier were intended to defraud, defeat or delay creditors.

49 **John Aquino** submits that he was not the sole directing mind of BCCL and **Forma-Con**, and that he and the other directing minds, namely, Ralph and Steven, were paying BCCL's and **Forma-Con's** creditors in a timely fashion. He also asserts that he was taking steps to save BCCL from its current financial predicament in late 2017 and early 2018 by borrowing money and injecting it into BCCL.

50 **John Aquino** further contends that the Monitor and the Trustee have unfairly targeted him in these proceedings and made him the scapegoat for the plight of BCCL and **Forma-Con**, without challenging transactions that are similar to the impugned transactions and that were being made by Ralph and Steven or even questioning their involvement. He further contends that he has been deprived of information that could exonerate him.

51 **John Aquino** also submits that all major decisions in the Bondfield Group were made by Ralph, Steven and him, and that at the highest level it was a three-man operation. He asserts that the accounting department, and the CFO, Dominic DiPede, as well as the Controller, Rocco Micciola, reported to all three on all aspects of the accounting department and financial affairs of the Bondfield Group. **John Aquino** further asserts that Ralph and Steven were fully aware of the alleged impugned transactions and had access to the financial status and affairs of the Bondfield Group.

***Anastasio, Coccia and Caruso***

52 Anastasio, Coccia and Caruso support **John Aquino's** position that he did not have the requisite intent to defraud, defeat or delay creditors, and they rely on his affidavit of June 14, 2020 in support of their position. They also assert that even if it were found that **John Aquino** had the requisite intent, that intent could not be attributed to BCCL and **Forma-Con** because BCCL and **Forma-Con** did not benefit from the false invoicing schemes.

53 Further, Anastasio, Coccia and Caruso assert that even if it were found that **John Aquino** had the requisite intent and it could be attributed to BCCL and **Forma-Con**, the court should exercise its discretion to decline to grant the relief sought by the Monitor and the Trustee in respect of the false invoicing schemes at BCCL and **Forma-Con** because the Monitor and the Trustee have unfairly taken the side of Ralph and Steven against **John Aquino** in a bitter family dispute.

54 Anastasio asserts that if he is found to be liable, he should be entitled to a set off in the amount of 3,750,000 USD. He claims that he is due this amount as a fee for his services in effectuating the term sheet for a bank loan from Deutsche Bank to the Bondfield Group, even though the loan was never advanced.

55 Coccia asserts that there is insufficient evidence to find that she was privy to the false invoicing schemes. Even if there were sufficient evidence, she asserts that court should decline to find her liable given her limited involvement in the false invoicing transactions.

***The Solano Estate***

56 Luana Solano, as Estate Trustee of the Solano Estate, asserts that she had no knowledge of any involvement by Solano in directing the issuance of invoices or signing cheques as alleged by the Monitor and the Trustee. She further asserts that she had no knowledge of Solano receiving any payments or funds through any scheme as alleged by the Monitor and the Trustee.



**664 Ontario**

57 664 Ontario submits that in 2014 it was consulted by the Bondfield Group to provide consulting services relating to its tender for the Hawkesbury Hospital project, and that it provided that service to **Forma-Con**, for which it was paid. Accordingly, that payment was not a transfer at undervalue and not part of a false invoicing scheme.

**ISSUES**

58 The issues in the Bondfield Application are as follows:

1. Are the Bondfield impugned transactions relating to the false invoicing scheme transfers at undervalue under s. 96 of the BIA?
2. If yes, are the Bondfield Respondents liable for the transfers at undervalue relating to the false invoicing scheme?
3. Is the Monitor entitled to recover the entirety of the value of the Bondfield impugned transactions relating to the false invoicing scheme, totalling \$21,807,693?
4. Are the Bondfield impugned transactions relating to the alleged fund cycling scheme transfers at undervalue under s. 96 of the BIA?
5. If yes, is 230 liable for the transfers at undervalue relating to the alleged fund cycling scheme?
6. Is the Monitor entitled to recover the entirety of the value of the Bondfield impugned transactions relating to the alleged fund cycling scheme, totalling 13,985,743 CAD and 35,030 USD?

59 The issues in the **Forma-Con** Application are as follows:

1. Are the **Forma-Con** impugned transactions transfers at undervalue?
2. If yes, are the **Forma-Con** Respondents liable for the transfers at undervalue?
3. Is the Trustee entitled to recover the entirety of the value of the **Forma-Con** impugned transactions totalling \$11,366,890?

***The Monitor's Evidence******The False Invoicing Scheme***

60 The Monitor's reports detail the discovery of the false invoicing scheme and how it was carried out. Those details follow.

61 For about seven years, from 2011 to 2018, purported suppliers to BCCL (the "Suppliers") delivered invoices to BCCL seeking payment for services or materials purportedly supplied to BCCL on various projects. No such services or materials were provided. These invoices were approved and paid out by BCCL under the supervision of **John Aquino** even though BCCL received no consideration.

62 None of the Suppliers had any apparent business activity or business address, and many of them shared an address, phone number, and/or bank account. Payments made to five different Suppliers were all deposited into a single account at the Bank of Montreal.

63 On review of BCCL's records, the Monitor did not locate any ordinary course correspondence between BCCL's

operations teams and the Suppliers regarding the purported services or materials provided. The Monitor found no evidence in the Suppliers' bank accounts of the kinds of expenditures that would have been expected in connection with the supply of purported services or materials to BCCL.

64 Steven confirmed to the Monitor that none of the Suppliers were legitimate suppliers of BCCL, though some had names substantially similar to legitimate suppliers. The services or materials referred to in the invoices from the Suppliers were not supplied by them, and BCCL's records showed no evidence of contracts, quotations or other relevant and customary documentation pertaining to legitimate suppliers in respect of the Suppliers.

65 The BCCL Supplier Respondents represent a subset of the Suppliers involved in the invoicing scheme during the Bondfield review period. During that time, the BCCL Supplier Respondents received \$21,807,693 from BCCL through their participation in the false invoicing scheme. There was an additional \$20,451,749 in false invoices that fell outside of the Bondfield review period, which the Monitor asserts is relevant in determining whether **John Aquino** is entitled to any offset or credit for amounts he injected into BCCL.

66 **John Aquino** and his cousin Solano operated the scheme inside Bondfield. They received, approved and made payment on the false invoices. On the outside, Caruso, Anastasio, Coccia and Siracusa (together with **John Aquino** and Solano, the "individual Bondfield Respondents") acted on behalf of the BCCL Supplier Respondents, being the shell companies that supplied the invoices.

67 The Monitor has been unable to trace all of the proceeds of the false invoicing scheme, but it can demonstrate that the BCCL Supplier Respondents distributed proceeds from the scheme to individual Bondfield Respondents or the corporations they controlled.

68 Under the scheme, **John Aquino** personally received and initialed a large number of the invoices from the BCCL Supplier Respondents. Approximately 130 invoices (in respect of both BCCL and **Forma-Con**) were found and approximately 50 appear to have been initialed by **John Aquino**. He also approved and/or signed cheques for a significant number of payments from BCCL to the BCCL Supplier Respondents. The Monitor sampled 150 cheques issued to BCCL Supplier Respondents and found that **John Aquino** had signed 100 percent of them. **John Aquino** has provided no explanation as to why he, as president, would be receiving and approving the invoices submitted by the BCCL Supplier Respondents.

69 **John Aquino** also corresponded with the BCCL Supplier Respondents through Caruso, Anastasio and Siracusa, and received fictitious invoices from them by way of e-mail. This marked a departure from the typical practice at BCCL, by which suppliers would deliver both electronic and hard copy invoices to the accounting department at BCCL for processing.

70 **John Aquino** benefitted personally from the scheme. His corporation, 230, received not less than \$5,829,939 from the BCCL Supplier Respondents during the Bondfield review period. In turn, 230 paid **John Aquino** \$5,184,346.

71 Solano was BCCL's former head of Information Technology. He had no relevant experience or responsibilities for vendor or procurement matters, yet he sent over 100 emails to individuals, including Caruso and Anastasio, who were acting on behalf of BCCL Supplier Respondents. Solano instructed them on: (i) the amounts to be invoiced to BCCL for work or supplies supposedly provided by those Suppliers; (ii) the description that should be included in the invoices for that supposed work or supply, and (iii) the projects to be charged for the alleged work or supply. Solano was paid at least \$507,000 directly by the BCCL Supplier Respondents.

72 The chart below shows the breakdown of the funds received by each of the BCCL Supplier Respondents and 230 from BCCL during the Bondfield review period. The amount shown for 230 represents receipts that related to the fund cycling scheme and not the false invoicing scheme.

<b>Corporate Supplier Respondent</b>	<b>Receipt from BCCL</b>
2466601 Ontario Inc./MMC General Contracting	\$4,208,798
2483251 Ontario Corp./Clearway Haulage	\$7,566,887
2420595 Ontario Ltd./Strada Haulage	\$6,097,028
2420570 Ontario Ltd./MTEC Construction	\$3,093,827

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RCO General Contracting Inc.	\$282,500
Time Passion, Inc.	\$558,653
2304288 Ontario Inc.	\$13,985,743—US\$35,030
Total (after April 3, 2014)	35,793,436 CAD—35,030 USD

73 Caruso, Anastasio, Siracusa and Coccia directed or acted on behalf of one or more of the BCCL Supplier Respondents.

74 Caruso acted on behalf of Clearway, MTEC and Strada, which account for 54.22 percent of the value of payments made to the BCCL Supplier Respondents. Caruso submitted invoices directly to **John Aquino** and received at least \$667,000 from the BCCL Supplier Respondents.

75 Anastasio acted on behalf of MMC and RCO, which account for approximately 12.5 percent of the value of payments made to the BCCL Supplier Respondents. Anastasio also submitted invoices directly to **John Aquino** and received at least \$1,892,672 from the BCCL Supplier Respondents.

76 Coccia is a director listed on the corporate profiles of MTEC, Strada, and RCO and is a signatory on the bank accounts for these companies into which payments were made in respect of the fictitious invoices. She was paid \$88,008 by BCCL Supplier Respondents.

77 Siracusa submitted invoices on behalf of Time Passion, Inc. and corresponded directly with **John Aquino** in respect of these invoices.

**The Scheme Involving 230**

78 The Monitor's reports detail the discovery of the fund cycling scheme and how it operated. Those details follow.

79 The transfers from BCCL to 230 during the Bondfield review period do not appear to directly involve any of the Bondfield Respondents other than **John Aquino** and 230. The Monitor's reports show that this scheme resulted in about \$14,029,369 in transfers from BCCL to 230 during the Bondfield review period. There were also transfers of about \$9,507,544 from BCCL to 230 prior to the Bondfield review period. Having occurred prior to the Bondfield review period, the Monitor acknowledges that those transfers cannot be challenged as transfers at undervalue for the purposes of s. 96, but asserts that they are relevant in the context of **John Aquino's** claims for an offset or credit for the \$17,300,000 of capital he alleges to have injected into BCCL during the Bondfield review period.

80 This scheme involved **John Aquino** directing payments from 230 into BCCL during the Bondfield review period. **John Aquino** admits that he made these payments as capital injections. The capital injections were made late in the year in anticipation of a year-end review of the financial status of the Bondfield Group by stakeholders to temporarily increase the cash and working capital for the purpose of increasing BCCL's borrowing and bonding capacity. The information would be used in a financial snapshot required by BCCL's lenders and Zurich, and would create a more favourable and positive outlook for the company. Following the review, BCCL would return the funds to 230.

81 The Monitor and **John Aquino** agree that **John Aquino**, through 230, advanced \$17,300,000 to BCCL during the review period. The Monitor alleges that BCCL illegitimately returned and/or paid \$13,985,743 of those funds to 230. The Monitor asserts that these transfers are transfers at undervalue because the \$17,300,000 supposedly injected or "lent" to BCCL through 230 must have originated from BCCL and been transferred to 230, for no consideration, through the false invoicing scheme or pre-review period gratuitous transfers from BCCL to 230.

82 In its Seventh Supplement to the Phase II Investigation Report of the Monitor, the Monitor reports: "... the Monitor is unaware of any significant source of funds that **John Aquino** ultimately had outside of Bondfield. Moreover, **John Aquino's** own evidence on the Extended Mareva motion is that, since his departure from Bondfield he has insufficient assets to support his lifestyle of expenses of approximately \$60,000 per month. Accordingly, it is probable based upon the information available to the Monitor that any funds flowing in from 230 to Bondfield originally arose from funds removed from Bondfield, whether through the Fund Cycling Scheme, the False Invoice Scheme, or otherwise." The Monitor further asserts

that it has no information on other sources of income available to **John Aquino** and relies on evidence from Ralph that **John Aquino** had no source of income other than the Bondfield Group.

### *The Trustee's Evidence*

83 The chart below shows the breakdown of the funds received by each of the **Forma-Con** Supplier Respondents and 230 from **Forma-Con** during the **Forma-Con** review period.

\$000s, unaudited	Payments Before 12/19/2014	Payments After 12/19/2014	Total Payments
<b>Supplier Respondents</b>			
Clearway Haulage	-	968	968
MMC General Contracting	-	2,795	2,795
MTEC Construction	3,859	5,260	9,119
Strada Haulage	109	1,711	1,820
2104664 Ontario Inc.	170	90	260
2304288 Ontario Inc.	565	543	1,108
	4,703	11,367	16,070
<b>Other Suppliers of Interest</b>			
2299726 Ontario Inc.	14,134	-	14,134
2104661 Ontario Inc.	1,516	-	1,516
B.I.C. Haulage	37	-	37
Terra Haulage	832	-	832
TP Inc	229	-	229
Vaughan Haulage	639	-	639
GGC Gem General Contracting	362	-	362
GH Gem Haulage	91	-	91
Gem Stone	249	-	249
ABC Masonry	58	-	58
	18,147	-	18,147
<b>Total</b>	<b>22,850</b>	<b>11,367</b>	<b>34,217</b>

Graphic 1

84 During the **Forma-Con** review period, the **Forma-Con** Respondents participated in a scheme that stripped \$11,366,890 from **Forma-Con** while providing no value in return. The scheme involved Solano sending an email to a **Forma-Con** Supplier Respondent, which provided that Respondent with an amount to be invoiced and the relevant description of the services. The Respondent would then issue an invoice (often with a 10 percent mark-up), and **Forma-Con** would issue a cheque, often within a day, signed by **John Aquino** or Solano. Whereas **Forma-Con** typically paid its invoices within 30 to 90 days of receipt, the cheques payable to the **Forma-Con** Supplier Respondents were paid within 1.3 days.

85 Also, unlike typical invoices, the invoices in respect of the impugned transactions were not accompanied by timesheets, contracts and other supporting documentation, and were not approved by a project manager.

86 **John Aquino** was a shareholder of **Forma-Con** and its president at the relevant time. He approved most of the **Forma-Con** impugned transactions by signing the majority of the cheques associated with the **Forma-Con** impugned transactions and personally received payments from 230. **John Aquino** has provided no evidence in support of his assertion that the payment made by **Forma-Con** to 230 during the **Forma-Con** review period was made for valuable consideration.

87 The transactions provided no value to **Forma-Con**. The **Forma-Con** Supplier Respondents did not carry on any active business in the purported nature of the **Forma-Con** impugned transactions. There were no supporting documents and the usual controls around invoicing were not followed. The false invoicing scheme is largely conceded, including by **John Aquino**.

### *John Aquino's Evidence*

#### *The Alleged Schemes*

88 **John Aquino** filed two affidavits, dated June 14, 2020 and July 27, 2020, respectively, upon which he relies in the both the Bondfield Application and the **Forma-Con** Application. In those affidavits, he does not offer any explanation for the

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Bondfield impugned transactions, the **Forma-Con** impugned transactions, the false invoices, or the emails underpinning the false invoicing scheme, and he does not explain why he, as president, approved many of the invoices and signed the cheques in payment of them.

89 Regarding the transfers between 230 and BCCL, **John Aquino** disputes that these were transfers at undervalue and contends that during the Bondfield review period he advanced \$17,300,000, through 230, to BCCL and that the \$13,985,743 that the Monitor asserts was illegitimately returned to 230 was not illegitimately returned at all. Rather, it represents a legitimate payment of funds, including Christmas bonuses and salary correctly paid to him and shareholder loan repayments. He asserts that 230 is in a net positive position in the amount of \$3,314,257 at the end of the Bondfield review period, which the Monitor does not dispute.

90 **John Aquino's** evidence is that in December of each 2014, 2015 and 2016, he, like others in upper management in the Bondfield Group, received a single salary and Christmas bonus for his employment services to BCCL and **Forma-Con** and it was paid to his holding company. **John Aquino's** evidence is that HST was charged on the amount of the Christmas bonus because Christmas bonuses paid by the Bondfield Group were, at times, billed to a particular project. He further asserts that there was no financial disadvantage to BCCL in paying the HST because it would receive an input tax credit for it.

91 **John Aquino** asserts that his capital injections into BCCL were similar to the capital injections being made by Ralph through a company known as Highbourne Estates, owned by Ralph and **John Aquino** jointly. He submits that the Bondfield Group accounting department approved all the capital injections, and that the transfers between 230 and BCCL were carried out by Mr. DiPede, who was hired in 2002 as the controller of the Bondfield Group and head of the accounting department.

92 In addition, **John Aquino** asserts that he borrowed \$7,500,000 from a third party in 2018, which is included in the \$17,300,000 advanced from 230 to BCCL and was injected into BCCL in March 2018. Of this amount, **John Aquino** states that \$2,000,000 was repaid to 230 on April 6, 2018 and the balance was recorded in his shareholder loan ledger. Accordingly, he asserts that the \$2,000,000 repayment was not a transfer at undervalue as the Monitor suggests, but rather a shareholder loan repayment.

93 **John Aquino** also asserts that he has a legitimate shareholder loan owing to him by the Bondfield Group in the amount of \$11,922,811. He contends that this amount was confirmed in the report of Ross Hamilton of Cohen Hamilton Steger & Co. Inc., the forensic and investigative accounting experts that **John Aquino** retained to opine on the financial status of BCCL and the Bondfield Group during the relevant review periods (the "CHS Report"). **John Aquino** asserts that he should be entitled to a set off in this amount in respect of any liability found against him.

94 **John Aquino** argues that there was no intent to defraud, defeat or delay creditors because the Christmas bonuses were legitimate remuneration earned in the ordinary course of business and the capital injections were also made in the ordinary course of business. In his affidavit, he states that he made the injections because "the perceived increase of capital was necessary to BCCL's ability to tender on large constructions projects, and approved by Steven, Ralph, and known to the company's auditors."

95 **John Aquino** concludes that the total amount of the Bondfield impugned transactions as alleged by the Monitor (\$35,837,062) must be reduced by the \$17,300,000 that 230 contributed to BCCL during the Bondfield review period.

**Injurious conduct of Zurich caused the financial problems in the Bondfield Group**

96 **John Aquino** submits that the Bondfield Group operated successfully in Ontario for over 45 years. However, in 2018, it experienced significant financial challenges owing to rapid expansion, collection issues on construction projects and conduct by Zurich that led to the application for **CCAA** protection.

97 Prior to Zurich's **CCAA** application, in 2016, National Bank denied the Bondfield Group an increase in its credit facility from \$60,000,000 to \$120,000,000. Then, the Bondfield Group entered into an \$80,000,000 loan facility with Bridging for one year at an interest rate of 13.5 percent calculated daily. In late 2017, the Bondfield Group negotiated long-term financing with Deutsche Bank, but it required an insurance policy for the construction holdbacks in which it would have priority. The insurance policy was obtained. However, a disagreement between Zurich and Deutsche Bank regarding the

loan facility in relation to Zurich's bonds could not be resolved and the Deutsche Bank facility did not proceed. In addition, there were delays on the projects and the Bondfield Group was required to pay liquidated damages and high interest on its loan from Bridging. Litigation against the Bondfield Group was increasing. By March 2018, the cash crunch was critical, and Zurich declined to bond liens registered against the construction projects, to bond any new projects, to pay any claims owing under labour and material bonds, and to provide many pre-qualification letters or bid bonds for new projects. As a result of Zurich's failure to bond off any liens, project owners were unable to advance any funds owing to the Bondfield Group for services rendered resulting in a liquidity crunch. The Bondfield Group had to act as its own surety and cover costs that ought to have been covered by Zurich.

### *The financial health of the Bondfield Group*

#### **i) The Deloitte Audits**

98 **John Aquino** submits that BCCL and the Bondfield Group retained Deloitte to audit their respective financial statements in the years 2013 and thereafter, and that the audits of those financial statements evidenced a strong financial position. Deloitte's audits for the years ending 2013, 2014, 2015 and 2016 showed that the companies were in a strong financial position. The BCCL audit for 2017 showed the same result. The Deloitte audits showed growth in contract revenue and retained earnings year over year from 2013 to 2017. Based on the Deloitte audits, **John Aquino** submits that there was no suggestion of any kind that the Bondfield Group was insolvent. He believed that the Bondfield Group had a positive financial outlook and was able to satisfy all of its creditors for the foreseeable future. **John Aquino** confirmed that he believed that for the entirety of the Bondfield review period, or at least a significant portion of it, all of the creditors, suppliers and subtrades of BCCL and the Bondfield Group were paid in full and on time, subject to normal course business disputes.

99 **John Aquino** further submits that notwithstanding Zurich's challenge to Deloitte's audit in its claim against Deloitte, Deloitte has not withdrawn its audit and is defending the proceeding Zurich has brought against it.

100 **John Aquino's** evidence is that it was the rapid expansion that the Bondfield Group embarked on in 2012 that ultimately led to its financial problems. It was selected as the successful bidder on a number of large-scale P3 projects from 2012 to 2015, which it was required to finance with its equity and special purpose vehicle financing while awaiting the release of payments and holdbacks, to continue its operations. Eventually, as referenced above, it sought to increase its lending facility with National Bank from \$60,000,000 to \$120,000,000. National Bank declined as did a number of other Canadian banks.

#### **ii) The CHS Report**

101 **John Aquino** retained Mr. Hamilton and CHS in 2020 to a) conduct an analysis of the BCCL and **Forma-Con** accounting documentation and financial information for the years 2014 to 2017 (2017 being the most recent date for available data) and to quantify the total amount owing to BCCL's and **Forma-Con's** creditors; b) to determine if creditors were paid on a timely basis; and c) to review and summarize the shareholder loan account and loans relating to **John Aquino** and 230.

102 CHS could not render an opinion up to December 2017 regarding BCCL's ability to pay its creditors due to data restrictions in the accounting software used by the Bondfield Group. CHS did render confirmatory findings as of December 2017 with respect to the Bondfield Group's ability to pay payroll liabilities, equipment financing, HST remittances and BCCL's net holdback position, among others. CHS concluded that BCCL paid its creditors on a timely basis up to at least December 2016, BCCL had positive earnings each year, and its assets were consistently greater than its liabilities at each year end, evidencing a positive working capital position.

103 Regarding **Forma-Con**, CHS concluded that **Forma-Con** paid its creditors on a timely basis up to at least December 2017, and found that its current assets were consistently greater than **Forma-Con** current liabilities evidencing a positive working capital position. It also found that accounts payable were paid promptly, as were payroll and HST remittances, among other expenses.

*Evidence of Anastasio, Coccia, Caruso and the Solano Estate*

104 Anastasio, Coccia and Caruso filed affidavits on which they rely for both the Bondfield Application and the **Forma-Con** Application. In those affidavits, they do not offer any explanation for the Bondfield impugned transactions, the **Forma-Con** impugned transactions, the false invoices, or the emails underpinning the false invoicing scheme.

105 Each of Anastasio, Coccia and Caruso stated that the Bondfield impugned transactions could not have been made with the intent to defraud, defeat or delay creditors because BCCL's financial position was sound during the Bondfield review period and the **Forma-Con** review period and each of these corporate debtors was then able to and was paying its debts. They rely on **John Aquino's** evidence respecting the financial health of BCCL and **Forma-Con** as set out in his affidavit sworn June 14, 2020.

106 In addition to denying that the impugned transactions described by the Monitor in these proceedings were transfers at undervalue pursuant to s. 96 of the BIA, Anastasio submits that he has known **John Aquino** for nearly 20 years, he has assisted the Bondfield Group, including **John Aquino** and Steven, and he was remunerated for his services by the Bondfield Group. His services included dispute resolution and an introduction in 2017 to Deutsche Bank, which considered providing the Bondfield Group a credit facility of 150,000,000 USD for which Anastasio expected a fee of 3,750,000 USD. The facility was never arranged, and he was never paid any of that sum. He asserts that if he is found to be liable for any amount in the Bondfield Application, this amount owing to him by the Bondfield Group ought to be taken into account.

107 Luana Solano, the spouse of Solano and the Estate Trustee of the Solano Estate, filed an affidavit in which she stated that she had no knowledge of any involvement by her late husband in directing the issuance of invoices or signing cheques while employed by the Bondfield Group as alleged by the Monitor. She further stated that she had no knowledge of Solano having received any payments or funds as alleged by the Monitor or the Trustee.

*664 Ontario's Evidence*

108 On behalf of 664 Ontario, its principal Antonio Caranci ("Caranci") filed an affidavit in which he stated that 664 Ontario was retained by the Bondfield Group to consult on the Hawkesbury Hospital project. In particular, he advised on a repair to a slab on grade area of the hospital. He submits that he succeeded in this work, and as a result of his consultation, and the input of another consultant that he engaged, the repair was done at a very competitive cost. The reduced cost resulted in considerable savings and allowed the Bondfield Group to credit the Hawkesbury Hospital project over \$8,000,000. In turn, **Forma-Con** paid 664 Ontario \$80,000, being approximately 1 percent of the credit, plus HST, for a total of \$90,400. 664 Ontario asserts that the Trustee's allegations that its invoice for the consulting services it provided was not legitimate, not rendered at arm's length, and a transfer at undervalue, are speculative and without evidentiary support. It submits that it provided legitimate services and that the funds it received from **Forma-Con** in exchange for those services are therefore not a transfer at undervalue.

**LAW**

109 A "transfer at undervalue" is defined in s. 2 of the BIA as follows:

**transfer at undervalue** means a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor.

110 A "creditor" is defined in s. 2 of the BIA as follows:

**creditor** means a person having a claim provable as a claim under this Act.

111 The test for proving a transfer at undervalue and a person's liability in respect of the same is set out in [subsection 96\(1\)\(b\) of the BIA](#). It provides, in part, as follows:

#### Transfer at undervalue

96 (1) On application by the trustee, a court may declare that a transfer at undervalue is void as against, or, in Quebec, may not be set up against, the trustee — or order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if

...

(b) the party was not dealing at arm's length with the debtor and

(i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy, or

(ii) the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and

(A) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or

(B) the debtor intended to defraud, defeat or delay a creditor. (emphasis added)

#### Establishing values

(2) In making the application referred to in this section, the trustee shall state what, in the trustee's opinion, was the fair market value of the property or services and what, in the trustee's opinion, was the value of the actual consideration given or received by the debtor, and the values on which the court makes any finding under this section are, in the absence of evidence to the contrary, the values stated by the trustee.

#### Meaning of person who is privy

(3) In this section, a person who is privy means a person who is not dealing at arm's length with a party to a transfer and, by reason of the transfer, directly or indirectly, receives a benefit or causes a benefit to be received by another person.

## ANALYSIS

### *Were the Bondfield impugned transactions and the **Forma-Con** impugned transactions transfers at undervalue?*

112 With the exception of a single payment of \$2,000,000 made by BCCL to 230 within one year of BCCL's insolvency, the Monitor relies on [s. 96\(1\)\(b\)\(ii\)\(B\) of the BIA](#) to show that the Bondfield impugned transactions are all transfers at undervalue. With respect to the \$2,000,000 payment, it is presumed to be a transfer at undervalue if the party receiving the payment was not dealing at arm's length with the debtor. In such a case, the Monitor does not need to show that the debtor was insolvent or that the debtor intended to defraud, defeat or delay the interests of a creditor.

113 The Trustee also relies on [s. 96\(1\)\(b\)\(ii\)\(B\)](#) to show that the **Forma-Con** impugned transactions are transfers at undervalue.

114 In relying on [s. 96\(1\)\(b\)\(ii\)\(B\)](#), the Monitor and the Trustee do not need to show that the corporate debtors BCCL and



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**Forma-Con** were insolvent, but must show that the corporate debtors intended to defraud, defeat or delay the interests of creditors.

115 To order that a party to an impugned transaction or a privy to the transfer, or all of those persons, pay the difference between the value of the consideration received by the corporate debtors BCCL and **Forma-Con** and the value of the consideration given by BCCL and **Forma-Con**, respectively, I must find that a) the party was not dealing at arm's length with the debtor; b) the transfer occurred during the period that begins on the day that is five years before the date of the commencement of *CCAA* proceedings or the initial bankruptcy event; and c) the debtor intended to defraud, defeat or delay a creditor.

116 The Bondfield Respondents do not dispute that the Bondfield impugned transactions took place within the Bondfield review period; and the **Forma-Con** Respondents do not dispute that the **Forma-Con** impugned transactions took place within the **Forma-Con** review period.

#### *The False Invoicing Schemes*

**a) Was value provided in the Bondfield impugned transactions and the **Forma-Con** impugned transactions relating to the false invoicing scheme?**

117 The Monitor and the Trustee assert that each of them discovered a false invoicing scheme in which invoices were created for services or materials that were never delivered to BCCL and **Forma-Con**, respectively. BCCL and **Forma-Con** received no consideration in respect of these invoices, yet money flowed to the Bondfield Respondents and the **Forma-Con** Respondents, respectively.

118 In their respective reports, the Monitor stated its opinion that there was nil value to BCCL in respect of any of the Bondfield impugned transactions, and the Trustee stated its opinion that there was nil value to **Forma-Con** in respect of any of the **Forma-Con** impugned transactions. Under s. 96(2) of the BIA, in the absence of any evidence to the contrary, the value of the Bondfield impugned transactions is the value provided by the Monitor, and the value of the **Forma-Con** impugned transactions is the value provided by the Trustee.

119 Four of the individual Bondfield Respondents and the same four individual **Forma-Con** Respondents, namely, **John Aquino**, Anastasio, Coccia and Caruso, have conceded that no value was provided by the BCCL Supplier Respondents and the **Forma-Con** Supplier Respondents for the Bondfield impugned transactions and the **Forma-Con** impugned transactions (not including 230). This result is supported by the lack of evidence uncovered in the Monitor's and the Trustee's investigations. I therefore find the value to BCCL of the Bondfield impugned transactions relating to the false invoicing scheme to be nil.

120 Regarding the **Forma-Con** impugned transactions, **John Aquino**, the sole shareholder of 230, offered no evidence to show that 230 provided valuable consideration to **Forma-Con** during the **Forma-Con** review period for the payment it received. The Trustee did not locate any evidence in its investigation to support that result. Despite their exclusion of 230 from their concessions, none of the individual **Forma-Con** Respondents adduced any evidence to show any valuable services or materials provided by 230 to **Forma-Con** during the **Forma-Con** review period. Accordingly, the presumption in s. 96(2) applies and the value of the consideration received by **Forma-Con** from 230 is the value stated by the Trustee. I find this value to be nil.

121 The Trustee asserts that the payment made to **Forma-Con** Supplier 664 Ontario, which is captured in the **Forma-Con** review period, is a transfer at undervalue. 664 Ontario argues that it provided legitimate services to **Forma-Con** for the payment of \$90,400, which was not a transfer at undervalue.

122 The 664 Ontario invoice was issued at the request of Solano, and contained minimal description of the service: "Consulting." The invoice was paid by cheque on the same day. The Trustee has not been able to find any supporting accounting records or correspondence at **Forma-Con** to show that the work was done. **John Aquino** states in his affidavit sworn July 27, 2020 that the explanation provided by Mr. Caranci for the invoice relates to a Bondfield project and has no relation to **Forma-Con** or the alleged payment.

123 In its evidence, 664 Ontario states that the consulting work was done on the Hawkesbury Hospital project, and that 664 Ontario entered into an agreement with Solano to provide consulting services. The Trustee has not been able to find, and 664 Ontario has not produced, any internal records to corroborate the work or the agreement. Despite the alleged value of the services provided, there are no email exchanges between Solano and 664 Ontario on the alleged \$8,000,000 savings for which 664 Ontario takes credit. 664 Ontario asserts that the work it was asked to do required a “high degree of structural engineering experience.” However, 664 Ontario has no expertise in structural engineering and Caranci confirmed under cross-examination that he was not qualified to read the report, which allegedly addressed the issues. The Trustee has not been able to confirm the report’s existence or to assess the value of the report. A search of Solano’s inbox turned up nothing to connect 664 Ontario to the Hawkesbury project. Caranci stated that he cannot find the report.

124 The Trustee specifically asked 664 Ontario to provide any relevant documents or correspondence regarding the work allegedly performed for **Forma-Con**. It got no response initially, but at Caranci’s cross-examination, Caranci produced scanned versions of email correspondence between Caranci and Rich Ramos, a principal of Canarch Consulting Services Inc. (“Canarch”), and an invoice from Canarch for work purportedly done on the Hawkesbury Hospital project at the request of 664 Ontario. The Trustee asked for the original correspondence in order to test the authenticity of the documents, but 664 Ontario refused to provide the original electronic versions for this purpose. 664 Ontario has provided no direct evidence and has refused to let the Trustee test the circumstantial evidence proffered by it in support of the payment.

125 Further, Caranci refused to answer questions about the invoices that 664 Ontario and its affiliate 2104661 Ontario Inc., which was another supplier of interest to the Trustee, billed to **Forma-Con** in years prior to the **Forma-Con** review period. Caranci also refused to disclose the income of 664 Ontario in the year prior to the year in which the invoice for \$90,400 was submitted to test whether it had a legitimate going concern business.

126 The Trustee asserts that the method of invoicing used by 664 Ontario reflects substantially the same pattern as is evident in the false invoicing scheme in respect of which **John Aquino** and the other living individual **Forma-Con** Respondents conceded that no valuable services were provided.

127 I find that the method of invoicing used by 664 Ontario is consistent with the false invoicing scheme relating to the other **Forma-Con** Supplier Respondents. Solano was at the centre of that scheme. Apart from Caranci, none of the Respondents in either the Bondfield Application or the **Forma-Con** Application has suggested that Solano, whose position was in IT, and who dealt with accounting for expenditures for the **John Aquino** family, had any role in managing or troubleshooting construction projects or hiring subcontractors or instructing structural engineers.

128 In light of the concessions made regarding the existence of a false invoicing scheme at **Forma-Con**, the absence of records in support of 664 Ontario’s work on **Forma-Con’s** projects and the dubious explanation about Solano’s role at **Forma-Con**, I am left with serious doubt about the legitimacy of 664 Ontario’s explanation of the payment to it. On a balance of probabilities, in light of the pattern of the false invoicing scheme, I find that 664 Ontario’s invoice, like many others produced as part of the false invoicing schemes, was a transaction in which no service was given for the value received. 664 Ontario has not met its burden to show that the invoice from 664 Ontario was something other than a false invoice, like the other invoices used in the false invoicing scheme. Further, I am prepared to draw an adverse inference against 664 Ontario based on its refusal to answer proper questions, which if answered honestly may have exposed facts unfavourable to 664 Ontario’s position.

129 Accordingly, I find the 664 Ontario transaction to be a transfer at undervalue, and the value of the services provided to **Forma-Con** by 664 Ontario in respect of this invoice to be nil.

130 In its reports for February and May 2020, the Trustee stated its opinion that there was nil value for any of the **Forma-Con** impugned transactions. Under s. 96(2) of the BIA, in the absence of any evidence to the contrary, the value of the **Forma-Con** impugned transactions is the value provided by the Trustee. I find this value to be nil.

**b) Did the Bondfield impugned transactions and the **Forma-Con** impugned transactions take place on a non-arm’s length basis?**

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131 Section 4 of the BIA provides that “related persons” are deemed to be acting on a non-arm’s length basis. It is a question of fact whether persons not related to one another were, at a particular time, dealing with each other at arm’s length.

132 The Monitor and the Trustee assert that with respect to the impugned transactions relating to the false invoicing schemes, none of the BCCL Supplier Respondents or the **Forma-Con** Supplier Respondents or the parties billing for these transactions were dealing at arm’s length. They further assert that the surrounding circumstances relating to the payments from BCCL to the BCCL Supplier Respondents, and from **Forma-Con** to the **Forma-Con** Supplier Respondents in respect of the false invoices underpinning the impugned transactions establish as a matter of fact that the transfers took place on a non-arm’s length basis. I agree.

133 Two persons deal on a non-arm’s length basis if they are acting on “non-economic considerations” that result in the consideration for the transfer failing to reflect the fair market value of the transferred property, or if they are not acting towards each other on the basis of normal commercial imperatives: *National Telecommunications, Re 2017 ONSC 1475, 45 C.B.R. (6th) 181* at paras. 43 and 48 (“*National Telecommunications*”).

134 In *National Telecommunications*, Myers J. held that an arrangement where a transferor “agrees to pay someone . . . for doing nothing” can lead to the necessary conclusion that the persons, including both the corporation that received the payment and the individual benefiting from the payment, were not dealing at arm’s length with the debtor: para. 48.

135 With respect to Clearway, MMC, MTEC, and Strada, the concession that neither BCCL nor **Forma-Con** received any consideration for the payments made to them in respect of the false invoicing is conclusive of the non-arm’s length nature of the transactions. The parties did not deal with each other at arm’s length because they all collaborated in the false invoicing schemes. In *National Telecommunications v. Stalt 2018 ONSC 1101, 59 C.B.R. (6th) 263* at para. 41 (“*Stalt*”), Justice Pattillo stated that s. 4(4) of the BIA requires a determination, based on the totality of the evidence, of whether the transaction involves “generally-accepted commercial incentives such as bargaining and negotiation in an adversarial format and maximizing of a party’s economic interest,” and that “in the absence of any such indicia, the inference that arises is that the parties were not dealing at arm’s length.”

136 **John Aquino**, Anastasio and Caruso effectively admitted their participation in the false invoicing schemes where there was an obvious absence of ordinary commercial incentives and dealings between the parties. The Bondfield Respondents (other than 230) were acting collaboratively to carry out the scheme, and BCCL and the BCCL Supplier Respondents acted in concert to effect the transfers for the benefit of the individual Bondfield Respondents.

137 The **Forma-Con** Respondents (other than 664 Ontario) similarly were acting collaboratively to carry out the scheme, and **Forma-Con** and the **Forma-Con** Supplier Respondents (other than 230 and 664 Ontario) acted in concert to effect the transactions for the benefit of the individual **Forma-Con** Respondents.

138 Anastasio, Coccia and Caruso acknowledged that, for the purposes of these Applications, the Bondfield impugned transactions and the **Forma-Con** impugned transactions, in respect of the false invoicing schemes with which they were involved, were all non-arm’s length transactions.

139 I find that 230 was not dealing with BCCL and **Forma-Con** at arm’s length because it is a related person under s. 4 of the BIA. **John Aquino** identified 230 as his company and he controlled it in all material respects. The Monitor and the Trustee assert that **John Aquino** was the directing mind of BCCL and **Forma-Con** during the relevant periods, though **John Aquino** asserts that control of BCCL and **Forma-Con** was shared between Ralph, Steven and him. Ralph and Steven dispute that they were directing minds of BCCL or **Forma-Con**. I find that for the purposes of s. 4 of the BIA, and the false invoicing schemes, **John Aquino** controlled 230, BCCL and **Forma-Con**. Consequently, they are deemed not to deal with each other at arm’s length.

140 I find that 664 Ontario was also not acting at arm’s length with **Forma-Con**. Its principal, Caranci did not provide any consideration for the payment made by **Forma-Con** to it. This lack of consideration is conclusive of its non-arm’s length relationship with **Forma-Con**.

141 In the case of each of BCCL and **Forma-Con**, there is no evidence that the transactions in issue between BCCL and

the Bondfield Respondents, and between **Forma-Con** and the **Forma-Con** Respondents, displayed any of the generally accepted commercial incentives such as bargaining and negotiation with a view to maximizing a party's economic self-interest. Accordingly, I find that BCCL was not dealing at arm's length with the Bondfield Respondents, and **Forma-Con** was not dealing at arm's length with the **Forma-Con** Respondents.

**c) Were the Bondfield impugned transactions and the **Forma-Con** transactions designed to, or made with an intent to, defraud, defeat or delay a creditor?**

142 The Monitor submits that the transfers of approximately \$21,807,693 through the false invoicing scheme, which occurred within the 5-year period preceding BCCL's insolvency, were transfers at undervalue because they were made with an intent to defraud, defeat or delay creditors. The Monitor asserts that **John Aquino**, as the directing mind of BCCL, engaged in a clandestine scheme that would hide from BCCL's creditors the fact that tens of millions of dollars were paid out of BCCL under the guise of job costs, which were not job costs at all, but rather payments to **John Aquino** himself and others who assisted him in this deception.

143 The Trustee submits that the transfers out of **Forma-Con** in the amount of \$11,366,890 that occurred within the **Forma-Con** review period were transfers at undervalue because they were made with an intent to defraud, defeat or delay creditors. The Trustee asserts that the surreptitious and fraudulent manner in which the false invoicing scheme was undertaken leaves that intent as the only reasonable conclusion.

144 The principal argument of both the defending Bondfield Respondents and the defending **Forma-Con** Respondents (other than 664 Ontario) is that there could be no intent on behalf of BCCL and **Forma-Con** to defraud, defeat or delay creditors because both BCCL and **Forma-Con**, throughout the respective review periods, were in strong financial positions and paying their respective debts until around late 2016 in the case of BCCL and late 2017 in the case of **Forma-Con**.

145 While I accept that the financial health of the debtor may be considered in determining whether the debtor intended to defraud, defeat or delay creditors, this factor is not determinative. In this case, there are a number of badges of fraud that, in my view, provide a strong evidentiary basis on which to find that each of BCCL and **Forma-Con**, through the actions of its president **John Aquino**, intended to defraud, defeat or delay its creditors.

146 Fraudulent intent under the *BIA* has not been widely considered by the courts. As such, much of the jurisprudence on fraudulent intent derives from cases involving Ontario's Fraudulent Conveyances Act, R.S.O. 1990, c. F.29 (the "*FCA*"). However, unlike the *FCA*, which specifically encompasses a "creditor or other", the *BIA* refers only to a "creditor" which would seem to preclude a future creditor. See Roderick Wood, *Bankruptcy and Insolvency Law*, (Toronto: Irwin Law, 2005) at 228.

147 Also, under the *FCA*, the knowledge or intent of the transferee is relevant because both the debtor and the transferee must be privy to the fraud. Under the *BIA*, the knowledge or intent of the transferee is not a consideration: see *Wood*, at 228. It is only necessary to establish fraudulent intent on behalf of the debtor. The courts require proof of a debtor's fraudulent intent.

148 In *Jonas v. McConnell* 2014 ONSC 6169, 35 B.L.R. (5th) 304 at para. 11 ("*McConnell*"), Justice Penny set out three requirements under the *FCA* to set aside a transaction. They are a) a conveyance of property; b) an intent to defeat; and c) a creditor or other towards whom the intent is directed. With the sole caveat that the *BIA* does not include "or other", in my view, the requirements identified by Justice Penny ought to apply under s. 96 of the *BIA* as well.

149 The conveyances of property are not disputed. I will now address whether there was the requisite "intent to defeat" and a creditor (or creditors) towards whom that intent was directed.

#### ***Intent to defraud, defeat or delay creditors***

150 **John Aquino** has admitted that there was no consideration for the payments issued by BCCL and **Forma-Con** on the false invoices (excluding payments to 230). This admission by the president of BCCL and **Forma-Con** that tens of millions

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of dollars were paid out of the debtor companies for no services or materials could be construed as some evidence of a subjective intent to defeat the companies' creditors. However, it is generally accepted that proof of a person's subjective intent is nearly impossible: *National Telecommunications* : para. 53. **John Aquino** disputes that the payments were made to defeat creditors, and the onus to prove otherwise remains upon the Monitor and Trustee.

151 Given the obvious limitations in proving a debtor's subjective state of mind, and whether a transaction as undertaken with fraudulent intent, the Monitor and the Trustee rely on the "badges of fraud" displayed in the impugned transactions relating to the false invoices to establish a presumption of intention.

152 In *Montor Business Corp. (Trustee of) v. Goldfinger* 2016 ONCA 406, 36 C.B.R. (6th) 169 ("Montor Business Corp.") at paras. 72-73, the Court of Appeal for Ontario identified a non-exhaustive list of "badges of fraud" and stated that an inference of intent to defraud, defeat or delay a creditor may arise from the existence of one or more badges of fraud; but whether the intent exists is a question of fact determined from all of the circumstances as they existed at the time of the conveyance. As stated by Justice Brown, as he then was, in *Montor Business Corp. (Trustee of) v. Goldfinger* 2013 ONSC 6635(Ont. S.C.J. [Commercial List]), 37 C.B.R. (6th) 200 ("Goldfinger") at para. 6635, "A court must resist the temptation to inject back into the circumstances surrounding the impugned transaction knowledge about how events unfolded after that time. The focus must remain on the belief and intention of the debtor at the time, as well as the reasonableness of that belief in light of the circumstances then existing."

153 Courts have identified several badges of fraud, including the following:

1. The conveyance was general (i.e., a transfer of substantially all of the transferor's property).
2. The transferor continued in possession and used the goods as the transferor's own, including selling them.
3. The conveyance was secret.
4. The conveyance was made in the face of an ongoing legal process.
5. The conveyance amounted to a trust of the goods.
6. The deed contained the self-serving and unusual provision "that the gift was made honestly, truly, and bona fide."
7. The deed gives the transferor a general power to revoke the conveyance.
8. The deed contains false statements as to the consideration.
9. The consideration is grossly inadequate.
10. There is unusual haste to make the conveyance.
11. Some benefit is retained under the settlement by the settlor.
12. Cash is taken in payment instead of a cheque.
13. A close relationship exists between the parties to the conveyance.

154 These badges serve an evidentiary function. They can be viewed as "circumstantial evidence that may cause a court to draw an inference of intent.": Roderick Wood, "Transfers at Undervalue: new wine in old skins?" *Annual Review of Insolvency Law* (Toronto: Ontario: Thomson Reuters: 2017) Online: WestlawNext Canada.

155 Where a transaction displays one of the badges of fraud, this will usually be enough to establish the debtor's illegal purpose unless the debtor can provide an innocent explanation: Anthony Duggan et al., *Canadian Bankruptcy and Insolvency Law*, 3rd ed. (Toronto: Emond Montgomery 2015) at 223.

156 The Trustee asserts that all of the “badges of fraud” identified by the Court of Appeal for Ontario in *Montor Business Corp.* exist in this case: the consideration for the transaction was grossly inadequate; the transfer was made to a non-arm’s length person; the transfer was secret; the transfer was effected with unusual haste; and the transferor was facing actual or potential liabilities, was insolvent, or about to enter a risky undertaking.

157 Based on the evidentiary record, and as noted above, I find that both the Bondfield and the **Forma-Con** impugned transactions were conducted between non-arm’s length parties. There was also a lack of consideration for the transfers. Inherent in the false invoicing schemes was a complete absence of value to BCCL and to **Forma-Con**. With the exception of transfers made to 230, **John Aquino**, Anastasio, Coccia and Caruso conceded this lack of value. The transactions were furthermore concealed through the creation and delivery of phony invoices, which purported to describe services that were never delivered. Both the Bondfield impugned transactions relating to the false invoicing scheme and the **Forma-Con** impugned transactions were generally conducted with unusual haste. Where the typical billing cycle was 30 to 90 days, payments made in association with these impugned transactions were on average made in a few days at most. Many of the transactions were facilitated by Solano, who was understood by the Monitor and the Trustee to have worked in Bondfield’s IT Department and accounting departments, but who was not engaged in vendor or procurement matters.

158 The transferors, being the corporate debtors, also had actual and potential liabilities, or were about to enter risky undertakings. According to the reports of the Monitor and the Trustee, both BCCL and **Forma-Con** had significant long-term and off-balance sheet liabilities during the relevant review periods and were guarantors on BCCL’s credit facility in respect of which there were contingent obligations in the tens of millions of dollars at the end of fiscal years 2014, 2015 and 2016. Ralph, Steven and **John Aquino’s** sister Maria Bot, were all creditors of BCCL with substantial shareholder loan accounts. The Bondfield Group was facing actual and potential liabilities, and by **John Aquino’s** own admission was embarking on a significant expansion in its construction activities at a time when its lender, National Bank, was not prepared to increase its lending. During the relevant period, **John Aquino** and Ralph were temporarily transferring funds to BCCL for the sole purpose of misleading BCCL’s stakeholders, including its lenders, into believing that BCCL was in a stronger financial position than it was.

159 I note that, in *Stalt*, at para. 57, the court held that a false invoicing scheme that had the effect of falsifying the debtor’s receivables and payables established an intent to “defeat, defraud or delay” a creditor.

160 In my view, the facts that the transfers were made by BCCL and **Forma-Con**, in secret, in haste, to non-arm’s length persons, and that the consideration for the transfers, being no consideration, was grossly inadequate, are sufficient circumstantial evidence to find fraudulent intent. The record also shows that these transfers were being made at a time when the Bondfield Group was expanding its business without the support of its primary lender, the National Bank. National Bank had declined to increase its lending and had classified its existing loan as a “special loan”, which would require closer monitoring. The totality of the evidence, in my view, provides a firm basis for finding that **John Aquino**, as principal and directing mind of BCCL and **Forma-Con**, had fraudulent intent — an intent to defraud, defeat or delay creditors. It was in no way reasonable for him to believe that, throughout the period of the impugned transactions, BCCL and **Forma-Con** did not have long-term creditors, like lenders, including Ralph, who would not be defeated or delayed by the draining of tens of millions of dollars from BCCL and **Forma-Con** through the false invoicing schemes.

161 The existence of badges of fraud creates a rebuttable presumption of the intention to defraud, defeat or delay creditors. The onus then shifts to those defending the fraud to adduce evidence to show the absence of fraudulent intent: *Purcaru v. Seliverstova* 2015 ONSC 6679, 69 R.F.L. (7th) 388 at para. 57.

162 The onus is high for **John Aquino**. He was the insider at BCCL and **Forma-Con**, the president of the debtor companies, who knowingly approved invoices and signed cheques for an aggregate of tens of millions of dollars based on phony invoices in relation to services or materials that were never delivered. There is no innocent explanation for a false invoicing scheme.

163 The defending Bondfield Respondents and **Forma-Con** Respondents (other than 664 Ontario) attempt to rebut the presumption by arguing that there could be no intention on the part of BCCL or **Forma-Con** at the time of the transfers to defraud, defeat or delay creditors because the financial condition of the Bondfield Group, BCCL, and **Forma-Con** at the time of the transfers was such that each was paying all of its debts as they came due, in full.

164 For the reasons that follow, I find that the defending Bondfield Respondents and **Forma-Con** Respondents (other than 664 Ontario) have not rebutted the presumption of fraudulent intent by adducing evidence of the purported financial condition of the Bondfield Group.

165 There is a divergence of opinion between the parties on the financial condition of the Bondfield Group during the Bondfield review period and the **Forma-Con** review period. **John Aquino** and, in turn, other Bondfield Respondents and **Forma-Con** Respondents (other than 664 Ontario), rely on the Bondfield Group's financial statements, as audited by Deloitte, in support of their view that BCCL and **Forma-Con** could not have had the intent to defraud, defeat or delay creditors. They assert that the financial statements show a prosperous and growing group of companies with a strong balance sheet during the relevant times, and show that the Bondfield Group could pay all of its creditors on time and in full at least until late 2017. As further evidence of the financial health of the Bondfield Group, **John Aquino** also relies on the CHS Report. The CHS Report shows that the Bondfield Group was in a strong financial position during the relevant review periods and was paying its current debts on time and in full until late 2017.

166 **John Aquino** further submits that Mr. Hamilton's evidence regarding the ability of BCCL and **Forma-Con** to pay its creditors in full has not been challenged and that no countervailing expert report has been filed by the Monitor or the Trustee.

167 Deloitte undertook an audit of the Bondfield Group, including BCCL, and **Forma-Con**, for the years 2013 to 2016 inclusive and prepared an audit in draft form for BCCL in 2017. In each of those years, Deloitte showed growth in contract revenue and retained earnings increasing year over year. **John Aquino** argues that the directing minds of the Bondfield Group therefore had no intention to defraud, defeat or delay creditors during those years. Rather, they believed that the companies comprising the Bondfield Group had healthy growth, and a strong financial outlook and would be able to satisfy all of its creditors for the foreseeable future.

168 The Monitor raises concerns about the reliability of the financial statements on which Deloitte relied and asserts that the actual financial condition of BCCL contradicts the defending Bondfield Respondents' position that BCCL was financially healthy during the Bondfield review period. The Monitor's investigation found that a) BCCL's financial records, prepared under the supervision of **John Aquino**, vastly overstated the revenues and profitability of its projects in the relevant period, causing BCCL to have to book significant adjusting journal entries under the supervision of the Monitor; b) Zurich had encountered stated losses of over \$300,000,000 to date in paying sub-trades and completing BCCL projects, which losses arose from projects and project activities started many years before the *CCAA* filing; c) BCCL's loan was placed in "special loans" by its prior lender, The National Bank, no later than the start of 2017; d) BCCL faced persistent liquidity challenges as evidenced in part by **John Aquino's** steps to inject cash into BCCL temporarily at the beginning of 2014 through 2017 in order to improve the appearance of BCCL's liquidity for the purposes of its bonding and lending arrangements; and e) the Bondfield Group's auditors, Deloitte, are the subject of litigation by both BCCL and Zurich with respect to the accuracy of the financial statements that the defending Bondfield Respondents and **Forma-Con** Respondents rely upon.

169 The Monitor submits that the information that CHS relied on was fundamentally inaccurate and unreliable. In its investigation, the Monitor found evidence that incorrect supplier invoice dates were entered into the accounting system and that BCCL had a practice of holding payment cheques while recording suppliers as having been paid. These practices extended use of BCCL's funds and kept supplier payments outstanding for longer periods of time than the periods reflected in the accounting system. For example, in June 2018, the Monitor discovered \$23,214,486.95 of cheques written to suppliers but not released.

170 According to the Monitor's reports, just as accounts payable were understated in BCCL's records, accounts receivable were overstated in a problematic fashion. While BCCL's contract revenues were going up, the collectability of those revenues was going down. Throughout the Bondfield review period, BCCL's accounts receivable collection was in continual decline.

171 Shortly after the *CCAA* filing, BCCL began to recognize large reversals of previously recognized revenue and profits because it had been previously recognizing revenue and earnings aggressively and without taking into account known cost overruns and project delays. BCCL's accounting records were restated by a new CFO with the assistance of the Monitor. The Monitor reported that this restatement resulted in adjusted deferred revenue from \$37,000,000 as of March 31, 2018 to

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approximately \$107,000,000 as of June 30, 2018 and then to approximately \$170,000,000 as of September 30, 2019. The Monitor asserts that these adjustments were necessary because BCCL overstated the level of completion of its projects during the Bondfield review period and recognized revenue early based on those overstatements. Given **John Aquino's** admitted knowledge of the state of BCCL's projects, including attendance at job sites, management of projects, suppliers and subcontractors, and job site meetings, it is notable that he permitted BCCL's financial statements to be prepared in reliance on inaccurate information regarding the state of completion of the projects in order to inflate BCCL's revenues.

172 The Monitor reported that BCCL was reporting negative gross profit of \$382,000,000 during the period from 2018 to 2020 and that a significant portion of those losses was actually incurred during the Bondfield review period.

173 The Monitor also reported write-offs for accounts receivable amounts of \$53,000,000 relating to the Bondfield review period in the fourth quarter of 2018.

174 Thus, according to the Monitor's evidence, contrary to the position asserted by the defending Bondfield Respondents, BCCL's financial position during the Bondfield review period was that of a corporation in financial decline, which could ill afford the additional drain of the Bondfield impugned transactions.

175 According to the Trustee reports, **Forma-Con** owed approximately \$9,000,000 in 2014; \$96,000,000 in 2015; and approximately \$119,000,000 in 2016. **Forma-Con** was also a guarantor of BCCL's credit facility with National Bank with contingent obligations of \$48,000,000, \$55,000,000, and \$56,000,000 at the end of fiscal 2014, 2015 and 2016, respectively. Further, **Forma-Con** became a guarantor of BCCL's \$80,000,000 credit facility with Bridging Finance Inc. when the facility was entered into in July 2017.

176 The Trustee asserts that the CHS report is flawed with respect to **Forma-Con**. The report concludes that **Forma-Con** paid its liabilities on a timely basis at least until December 31, 2017. Despite this conclusion, Mr. Hamilton agreed on cross-examination that he did not conduct a solvency analysis or consider **Forma-Con's** liabilities on a "balance-sheet test" and could not opine on **Forma-Con's** solvency during the review period. Mr. Hamilton also agreed that his analysis was limited to **Forma-Con's** short-term liabilities and that he did not consider any of the long-term, contingent or off-balance sheet liabilities of **Forma-Con**. Mr. Hamilton conceded that he was not aware that **Forma-Con** was a guarantor of BCCL's credit facilities with National Bank. He did not consider **Forma-Con's** ability to pay its related-party liabilities.

177 Both the Monitor and the Trustee challenge the CHS Report because it focused on only one measure of corporate solvency, the cash flow test. When examined, Mr. Hamilton, admitted his lack of expertise in insolvency matters and conceded that he did not consider BCCL's ability to pay its long-term creditors and contingent creditors.

178 **John Aquino** asserts that many of the issues raised by the Monitor and the Trustee have no impact on the fact that BCCL and **Forma-Con** were in strong financial positions and able to pay their respective creditors on a timely basis.

179 Irrespective of the precise financial condition of the Bondfield Group, on which the parties do not agree, the Monitor and the Trustee assert that the test under the *BIA* is disjunctive: a monitor or trustee must show that the debtor was insolvent at the time of the impugned transaction *or* that the debtor intended to defeat, defraud or delay creditors. The Monitor argues that this choice is reflected in the fact that the statute contemplates recovery for transactions made with an intent to defeat, defraud or delay creditors up to five years prior to an insolvency event; therefore, it is no answer to assert that during this five-year period, the debtor may not have yet been insolvent.

180 In response to the arguments of the Monitor and the Trustee on the financial condition of BCCL, **Forma-Con** and the Bondfield Group, the defending Bondfield Respondents submit that Mr. Hamilton adjusted his accounting in the CHS Report to take into account the \$23,214,486.95, which had not been released to suppliers, and found that it had no impact on BCCL's ability to pay its bills on time and in full during the Bondfield review period.

181 The defending Bondfield Respondents also submit that the Monitor is incorrectly using hindsight to determine **John Aquino's** intent and cannot consider all of the Bondfield impugned transactions cumulatively, but must put itself in **John Aquino's** shoes in each of the years covered by the Bondfield review period and determine his intent at that time. They submit that if the Bondfield impugned transactions are examined in each year, the results would show that the amount paid



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out on false invoices was a relatively small fraction of the gross revenue for that year. They assert that it cannot be said that **John Aquino** could have had the intent to defeat creditors if he was only permitting BCCL to pay out about 1 percent of its gross revenue. They submit that this would have been the case in 2014 when the total of the false invoices paid was \$5,749,917 as compared to gross revenue of \$475,000,000, and that even with the payment on the false invoices, the net profit for that year was \$17,400,000.

182 I am not persuaded that the quantum of the amounts paid out on the false invoices as compared to the gross revenue or the net profit of BCCL in a given year absolves **John Aquino** of an intent to defeat creditors. The amounts, whatever the quantum, were paid out at a time when **John Aquino** was taking deliberate steps to mislead the stakeholders of BCCL with respect to its financial position and these payments bore a number of badges of fraud. Each of these payments reduced the funds available to pay long-term creditors and increased bank indebtedness as shown in the Monitor's reports.

183 In further support of their position, the defending Bondfield Respondents and **Forma-Con** Respondents (other than 664 Ontario) rely on the *Goldfinger* case for the proposition that “[w]here a debtor remains in a position to pay off liabilities, an impugned transaction cannot have been made with an intent to defeat, defraud or delay a creditor.” That case involved a trustee attacking a settlement reached between the debtor and a former investor (Dr. Goldfinger). The trustee sought to set aside a payment to Goldfinger as a transfer at undervalue under s. 96 of the BIA. The court found that, at the time of the transfer, the parties believed that the real properties held by the debtor possessed significant future value which would “prove sufficient to pay off those companies’ liabilities and generate a profit for [the corporation’s directing mind] and Goldfinger to share.” (see para. 274). The court placed “significant weight” on this evidence in finding that, while the debtor may have been unreasonable in his belief as to the future value of the real property, the debtor did not intend to defraud or delay creditors. Notably, there were no badges of fraud present in that case. See paras. 275-280.

184 The Bondfield and **Forma-Con** Respondents also rely on *Commerce Capital Mortgage Corp. v. Jemmett* 1981 37 C.B.R. (N.S.) 59 (Ont. H.C.) [Ont. Sup. Court] for the proposition that “where a conveyance occurred at a time where there was no evidence of the debtor experiencing financial difficulty, the plaintiff was unable to prove that the conveyance had the intent to defeat, hinder, delay or defraud creditors.” In that case, the court considered the conveyance of a matrimonial residence from Mr. Jemmet to his wife. Mr. Jemmet made this conveyance one and a half years before he provided personal guarantees for loans made to his corporation, Jeroy Limited. The plaintiff creditor, seeking to recover under this guarantee, attacked the conveyance under the FCA. Importantly, the court noted, at para. 9, that there “was no evidence adduced by the plaintiff that at the time of the conveyance to Mrs. Jemmet there were any current and anticipated financial obligations or debts of Jeroy Limited.” It held that there was no intention to defraud or delay creditors. I note that the court did not appear to identify any badges of fraud in this case. While the case does illustrate the importance of the debtor’s financial position in assessing intent, I do not find this case to be analogous to the case at bar.

185 The Respondents also rely on *Fleming v. Edwards* [1896] 23 O.A.R. 718 (Ont. C.A.), as a case “where a debtor made a voluntary conveyance of property at a time when he was solvent and subsequent events impacted on his ability to pay his creditors in full, the voluntary conveyance did not meet the requisite intent to defeat, hinder, delay or defraud creditors.” This case involved a fairly unique fact scenario. In this very old decision, the defendant made a conveyance of property to his wife prior to entering into a hotel business. He only became insolvent as a result of a fire that destroyed the premises. The court held that there was no intent to defraud creditors at the time the defendant made the transfer.

186 As shown by these cases, the financial position of a debtor at the time of the impugned transactions can indeed be a relevant consideration in assessing whether the debtor had an intent to defraud, defeat or delay creditors. However, in my view, the relevance of that consideration should not be overstated. The debtor’s financial position serves as additional circumstantial evidence of the debtor’s intent that should be considered alongside the badges of fraud, if present, in determining whether the debtor had the requisite intent under s. 96. The debtor’s financial position is but one factor for the court to consider in determining the debtor’s intent. Like the badges of fraud, it is circumstantial evidence worthy of the Court’s consideration. As noted by the Court of Appeal for Ontario in *Urbancorp Toronto Management Inc. (Re)* 2019 ONCA 757, 74 C.B.R. (6th) 23 at para. 64: “there is no special rule that makes evidence of debtor’s insolvency determinative as opposed to one factor to be considered. . . . Instead, the crucial question remains whether the applicant has proved the fraudulent intent of the debtor.”

187 The Trustee does not rely on the branch of s. 96 that requires a showing of insolvency. Further, the CHS report offers

no opinion on the solvency of BCCL or **Forma-Con**. Their respective current liabilities are only part of their overall liabilities, and the payment of those liabilities is only part of the equation. As noted, to the extent that funds are withdrawn from the company, it becomes less able to meet its long-term or contingent liabilities, and the long-term creditors are affected by those withdrawals.

188 I was not provided with any authority in support of the position that a company's financial health positively precludes a finding of fraudulent intent, and I do not find that it does. Even if BCCL and **Forma-Con** were paying their respective current suppliers for a period of time, this does not sanitize the fraud, which is supported by a number of badges of fraud.

189 I accept that **John Aquino** may have had other motives, apart from defeating creditors, in paying out tens of millions of dollars from BCCL and **Forma-Con**. However, to meet its onus, the Monitor and the Trustee need only demonstrate that one of the debtor's motives or intentions was to defraud, defeat or delay a creditor: *Juhasz Estate v. Cordiero* 2015 ONSC 1781, 24 C.B.R. (6th) 69 at para. 54.

190 I find that the badges of fraud in this case establish **John Aquino's** intent to defraud, defeat or delay creditors. He was a directing mind of BCCL and **Forma-Con** and signed a number of the cheques associated with the impugned transactions. In cross-examination he stated that he would have been familiar with 100 percent of the suppliers and subtrades. He conceded that BCCL and **Forma-Con** received no value in the impugned transactions (not including 230).

191 At the same time as he was authorizing payments on false invoices, he was injecting capital into BCCL from time to time in an attempt to disguise the true financial condition of BCCL. An intent to defraud, defeat or delay creditors, for the purposes of s. 96 of the BIA can be established through evidence of an explicit fraudulent act in the sense of evidence that a representation was made concerning the ownership of [the debtor's] assets to a creditor or potential creditor which was not true: *Incondo v. Sloan* 2014 ONSC 4018, 16 C.B.R. (6th) 220 at para. 81, aff'd 2015 ONCA 752, 31 C.B.R. (6th) 110.

192 It is reasonable to infer that **John Aquino** took these actions to avoid BCCL's and **Forma-Con's** obligations and defeat their creditors. Neither he nor any of the other Respondents has given evidence of an alternative explanation.

193 The true financial condition of each of BCCL and **Forma-Con** at the time of each impugned transaction cannot be determined on the record before the court. Based on the evidence, there were a number of unusual accounting practices. These include **John Aquino's** admission that, during the Bondfield review period, he and Ralph routinely injected capital into BCCL to mislead BCCL's stakeholders into thinking that the Bondfield Group was financially stronger than it was; the fact that suppliers' cheques were withheld to give BCCL an opportunity to extend the time it could use the funds owing to suppliers; the fact that BCCL was entering a date later than the date shown on the supplier invoice into its accounting system, which allowed its payables to remain outstanding longer; the fact that significant adjusting journal entries had to be made regarding BCCL's revenue and profit once the Monitor was appointed; and the fact that a claim has been brought against Deloitte with respect to its audit of Bondfield Group financial statements (which it is defending). In light of these concerns, it is reasonable to infer that the financial records provided to Deloitte and to Mr. Hamilton were likely not reliable.

194 The defending Bondfield Respondents and **Forma-Con** Respondents assert that Ralph and Steven were also directing minds of BCCL and **Forma-Con** and, therefore, an intent to defraud, delay or defeat creditors cannot be met without establishing their intent as well. In his affidavit, Anastasio attested that the Bondfield Group had three directing minds, Ralph, **John Aquino** and Steven, and that all three of them knew and approved at all times all of the impugned transactions underpinning the false invoicing scheme.

195 I disagree that a finding of an intent to defraud, defeat or delay creditors requires a mutual intent among all of Ralph, **John Aquino** and Steven. First, Ralph and Steven have denied knowledge of the false invoicing scheme involving BCCL and **Forma-Con** and the alleged fund cycling scheme involving 230. **John Aquino** has adduced evidence of their alleged participation in other off-book transfers of values. Based on the record, I cannot conclude to what extent Ralph and Steven in fact engaged in other off-book transfers; however, I see no evidence of Ralph's or Steven's participation in the schemes under review in these matters to strip BCCL and **Forma-Con** of tens of millions of dollars and to disguise such stripping, in the case of BCCL, through attempts to represent an inaccurate financial picture of the companies for creditors and other stakeholders.

196 In my view, whether Ralph and Steven did or did not participate is of no assistance to **John Aquino**. If they did participate, their participation would support the Monitor's and the Trustee's position that the BCCL impugned transactions and the **Forma-Con** impugned transactions were entered into with an intent to defraud, defeat or delay creditors. If they did not participate and were not aware of the impugned transactions, this fact does not assist **John Aquino**, who has admitted that as president of each of BCCL and **Forma-Con**, he was one of its directing minds. As president, he was able to, and did take binding actions on behalf of BCCL and **Forma-Con**, not the least of which were the acts in issue in these Applications.

197 The totality of the evidence demonstrates a pattern of an intent by **John Aquino**, on behalf of each of BCCL and **Forma-Con** to defraud, defeat or delay the creditors of BCCL and **Forma-Con**. The badges of fraud permit an inference of intent and evidence a presumption of intent that is not rebutted by the evidence that current liabilities were being paid in the ordinary course of business during the Bondfield review period and the **Forma-Con** review period.

*Was there a creditor towards whom the intent was directed?*

198 As set out above, under the *FCA*, there must be a "creditor or other" towards whom the fraudulent intent was directed. Cases have held that the language "creditors and others" is "broad enough to contemplate a person that, while not a creditor at the time of the conveyance, may become one in the future": *Bearsfield Developments Inc v McNabb* 2016 ONSC 6294, 41 C.B.R. (6th) 310 at para. 47. Future creditors are clearly contemplated by the *FCA*; however, as noted, the *BIA* does not contain this broad language and therefore arguably does not apply to future creditors.

199 **John Aquino** asserts that neither the Monitor nor the Trustee can meet its onus to show that BCCL and **Forma-Con**, in participating in the impugned transactions, had the intent to defraud, defeat or delay creditors because both corporations were paying their debts as they came due and therefore had no "creditors", as that term is defined in the *BIA*, during the Bondfield review period or the **Forma-Con** review period. He further asserts that the Trustee's argument that the impugned scheme unavoidably affected **Forma-Con's** stakeholders "when the music stopped" inappropriately reads into s. 96(1)(b)(ii)(B) future or subsequent creditors. I disagree with this interpretation of the Trustee's argument.

200 The definition of "creditors" in the *BIA* includes persons who are owed debts and those with unliquidated claims. As such, an intent to defeat either of these two types of claimants will suffice. However, as noted, "it is more doubtful whether the transfer at undervalue provisions encompass future creditors":

the significance of the additional words "and others" after creditors is widely known and featured in every major work that studies fraudulent conveyance law. The choice not to include this wording should therefore be taken as an indication on the part of the drafters to limit the application of the section: Roderick Wood, "Transfers at Undervalue: new wine in old skins?" *Annual Review of Insolvency Law*.

201 As set out in *McConnell*, the determination of whether a transaction should be set aside depends on an intent to defeat a creditor towards whom that intent is directed. If the debtor intended to defeat, defraud or delay present creditors, then the transaction can be attacked under s. 96 of the *BIA*. However, if the debtor intended to defeat, defraud or delay future creditors, then the transaction cannot be attacked under s. 96 of the *BIA*. In *Silbernagel*, Re200620 C.B.R. (5th) 155 (Ont. S.C.J.) (ONSC) at para. 7, the court found that a person who might become a creditor of a bankrupt at a future date is not a "creditor."

202 While I accept that the *BIA* does not define "creditor" to include future creditors, **John Aquino's** submission seems to conflate the distinction between present and future creditors with the financial health of the Bondfield Group, stating that *Goldfinger* establishes that there can be no intent to defeat creditors where, at the time of the transfer, a debtor remains in a position to pay off current liabilities. I disagree that this conclusion follows from the analysis in that case. As noted, in my view, the corporation's financial position is only circumstantial evidence that may or may not support an inference that the corporation intended to defeat creditors. In *Goldfinger*, the court merely held there was an absence of evidence of fraudulent intent. Nowhere in that case did the court state that a healthy financial outlook precludes a finding of fraudulent intent. As a matter of logic, even if a corporation is meeting its current liabilities, transactions can nevertheless be undertaken to defeat current creditors at some unspecified future date.

203 As such, in my view, if any debts owing at the time of the impugned transactions were indeed paid, then this may evince a lack of intent to defraud then-existing creditors and effectively bar the Monitor and Trustee from attacking the transfers. However, if there were debts owing at the time of the impugned transactions which were ultimately not paid, then it remains open to the Court to find that there was the requisite intent to defeat then-current creditors under s. 96.

204 Given that the Bondfield Group had outstanding debts, including a substantial loan from its primary lender and shareholder loans, at the time of the transfers (even though monthly payments on the bank loan were being made), it follows that there was a creditor or creditors toward whom BCCL's and **Forma-Con's** intent to defraud, defeat or delay could be directed. The Court is, therefore, not precluded from finding that the transactions were intended to defeat creditors that existed at the time of the transfers. The fact that the Bondfield Group remained in a position to pay off current liabilities is only one piece of circumstantial evidence to consider. The fact that each of BCCL and **Forma-Con** were paying off current liabilities at the time of the impugned transactions does not *per se* mean that those transfers were never intended to defeat then-current creditors.

*Can **John Aquino's** intent be imputed to BCCL and **Forma-Con**?*

205 In applying s. 96, for transactions in the year prior to the insolvency or the initial bankruptcy event, there is no need to show that the debtor was insolvent nor that the debtor intended to defeat the interests of creditors. However, for transactions between one and four years prior to the bankruptcy event, the Monitor and the Trustee must prove that the debtor intended to defeat the interests of creditors.

206 As noted, it is the intention of the transferors (the *CCAA* debtor and the bankrupt) and not the transferees that matters under s. 96. As such, it is the intention of the corporate debtors, BCCL and **Forma-Con** that matters in this case.

207 Anastasio, Coccia and Caruso argue that even if **John Aquino** acted fraudulently, his intention in effecting the schemes cannot be imputed to BCCL and **Forma-Con** because corporate intentionality has not been established. These Respondents also argue that **John Aquino** acted fraudulently in respect of BCCL and **Forma-Con**, and as such his actions cannot be imputed to Bondfield and **Forma-Con**.

208 The Monitor and the Trustee dispute this formulation of corporate wrongdoing. They argue that the intent of **John Aquino** can and should be imputed to BCCL and **Forma-Con**.

209 In an ordinary case, the intention of a corporation's "directing minds" can be imputed to the corporation itself through the corporate attribution doctrine. The corporate attribution doctrine derives from the Supreme Court of Canada decision in *Canadian Dredge & Dock Co. v. The Queen* [1985] 1 S.C.R. 662. While that case dealt with criminal liability, the doctrine has been recognized in the civil context as well. See: *Golden Oaks Enterprises Inc. (trustee of) v. MRL Telecom Consulting Inc* 2016 ONSC 5313, 33 O.R. (3d) 513 at para. 127.

210 The corporate attribution doctrine has yet to be applied in the context of s. 96 of the BIA.

211 Notably, the doctrine does not apply where the directing mind commits fraud on the corporation, as set out in *Canadian Dredge*, at para. 65:

In my view, the outer limit of the delegation doctrine is reached and exceeded when the directing mind ceases completely to act, in fact or in substance, in the interests of the corporation. Where this entails fraudulent action, nothing is gained from speaking of fraud in whole or in part because fraud is fraud. What I take to be the distinction raised by the question is where all of the activities of the directing mind are directed against the interests of the corporation with a view to damaging that corporation, whether or not the result is beneficial economically to the directing mind, that may be said to be fraud on the corporation. (emphasis added)

212 The modern test is described in the following paragraph from *Deloitte & Touche v. Livent Inc (Receiver of)* 2017 SCC 63, 2 S.C.R. 855 at para. 100:

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The test for corporate attribution was set out by this Court in *Canadian Dredge & Dock Co. v. The Queen*, [1985] 1 S.C.R. 662. To attribute the fraudulent acts of an employee to its corporate employer, two conditions must be met: (1) the wrongdoer must be the directing mind of the corporation; and (2) the wrongful actions of the directing mind must have been done within the scope of his or her authority; that is, his or her actions must be performed within the sector of corporate operation assigned to him. For the purposes of this analysis, an individual will cease to be a directing mind unless the action (1) was not totally in fraud of the corporation; and (2) was by design or result partly for the benefit of the corporation (pp. 681-82 and 712-13).

213 As stated by Van Rensberg J.A. in *DBDC Spadina Ltd. v. Walton* 2018 ONCA 60, 419 D.L.R. (4th) 409 (Ont. C.A.) (at para. 233):

*Canadian Dredge* instructs that where a corporation's alleged wrongdoing involves fraud by its directing mind, the court must be satisfied that (i) the directing mind was acting within her assigned field of operation, and that her actions (ii) were not totally in fraud of [the corporation], and (iii) were by design or result partly for the benefit of the corporation.

214 Anastasio, Coccia and Caruso submit that the minimal criteria to satisfy corporate attribution cannot be satisfied. Specifically, they argue that the Monitor and the Trustee have not shown that **John Aquino's** actions were within the scope of his authority, nor that his actions were intended to benefit the corporate debtors or had the effect of doing so. Therefore, they argue, **John Aquino's** alleged fraudulent intentionality cannot be attributed to the corporate debtors.

215 I disagree with the suggestion of these Respondents that, based on Steven's testimony, **John Aquino** did not have authority to enter into the transactions. Therefore, the specific impugned transactions were not authorized by BCCL and **Forma-Con**. In my view, the courts take a broader view of what constitutes corporate authority. Professor Anthony VanDuzer, in *The Law of Partnerships and Corporations*, 3rd ed. (Toronto: Irwin Law, 2009), at 201 states:

The corporation is responsible for any act by a directing mind in the general area of her responsibility, even if not specifically authorized by a corporate rule or policy. Indeed, even if there is a corporate rule or policy prohibiting the action, that is no defence to corporate responsibility. . . . Liability may be imposed on corporations where, by virtue of the practice of the corporation, the person with the guilty mind exercised corporate authority in the area in which the offence was committed. (emphasis added)

216 The question is not whether specific activity was authorized, but rather whether the specific activity fell within the individual's area of responsibility. **John Aquino's** areas of responsibility included engaging with suppliers and overseeing the provision of services and materials.

217 The real issue in this matter relates to whether the actions were by design or result partly for the benefit of the corporations. I agree that the actions of **John Aquino** were not intended to benefit BCCL and **Forma-Con** and they did not so do. If the *Canadian Dredge* criteria were applied strictly, it would mean that **John Aquino's** intent could not be attributed to the debtor corporations.

218 The Monitor and the Trustee argue that the formulation of corporate intent set out in *Canadian Dredge* should not be applied mechanically, and should not apply in this case. They submit that the *Canadian Dredge* formulation is incompatible with the very purpose of s. 96 of the BIA, which is aimed at restoring value for the benefit of the debtors' creditors.

219 It has been repeatedly affirmed that the corporate identification doctrine is concerned with policy. As stated in *Deloitte & Touche* :

102 . . . the policy factors identified therein which weigh in favour of imputing a corporation with the illegality or wrongdoing of its directing mind flow from the "social purpose" of holding a corporation responsible for the *criminal* acts of its employees where those acts are designed and carried out, at least in part, to benefit the corporation (*Canadian Dredge*, at p. 704).

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103 However, as Estey J. himself recognized, the doctrine is only one of “judicial necessity” and where its application “would not provide protection of any interest in the community” or “would not advantage society by advancing law and order”, the rationale for its application “fades away” (Canadian Dredge, at pp. 707-8 and 718-19).

220 Notably, the Supreme Court held in *Christine DeJong Medical Corp v. DBDC Spadina Ltd.* 2019 SCC 30 (S.C.C.) that policy considerations cannot relax the application of the *Canadian Dredge* criteria. On the contrary, it only provides a reason for courts to not apply the doctrine even where the *Canadian Dredge* criteria are met:

What the Court directed in *Livent*, at para. 104, was that even where those criteria are satisfied, “courts retain the discretion to refrain from applying [corporate attribution] where, in the circumstances of the case, it would not be in the public interest to do so” (emphasis added). In other words, while the presence of public interest concerns may heighten the burden on the party seeking to have the actions of a directing mind attributed to a corporation, Canadian Dredge states minimal criteria that must always be met. The appeal is allowed, with costs throughout (emphasis added).

221 The Supreme Court, in these brief reasons, adopted the dissent from Van Rensberg J.A in *DBDC Spadina Ltd. v. Walton* That decision strongly affirmed that, even in civil cases, the criteria in *Canadian Dredge* is not relaxed (at para. 236):

. . . When the *Canadian Dredge* criteria have been accepted and applied in civil cases, this has occurred without relaxing the criteria for finding a corporation is liable for a wrong, when its directing mind is acting fraudulently . . . .

222 All of this would suggest that the *Canadian Dredge* criteria is to be applied strictly in all civil cases, including, arguably, those arising under s. 96 of the BIA. However, it is worth noting that the dissent from Van Rensberg J.A. strongly underscored the seriousness of the allegations (which involved knowing assistance in the breach of a fiduciary duty) and the level of knowledge required:

237 I do not accept that the adoption of a less demanding standard is warranted here. As I see it, neither the civil burden of proof nor the nature and extent of the fraud would justify a less rigorous approach if the Listed Schedule C Companies are to be fixed with responsibility for the conduct of their director, Ms. Walton.<sup>27</sup> Knowing assistance in the breach of a fiduciary duty is a serious wrong that requires actual and not constructive knowledge by the participant. The investors in the Listed Schedule C Companies did not themselves know about or cause the companies to participate in Ms. Walton’s breach of fiduciary duty. (emphasis added)

223 The requirement for actual knowledge (as opposed to constructive knowledge) in establishing knowing assistance in the breach of fiduciary duty does not arise under s. 96 of the BIA. This was an important part of the court’s reasoning in that decision. Elsewhere in the dissent, Van Rensberg J.A. underscored this point while also noting the fault-based nature of the wrongful act:

216 Liability for knowing assistance in a breach of fiduciary duty is fault-based. It requires an intentional wrongful act on the part of the “stranger” or accessory, to knowingly assist in the fraudulent and dishonest breach of fiduciary duty. Participation in a breach of fiduciary duty for the purpose of knowing assistance requires that the accessory “participated in or assisted the fiduciary’s fraudulent and dishonest conduct.”

224 While it might be contended that s. 96 is similarly fault-based, in that it requires an “intentional wrongful act,” I note that the BIA generally is remedial legislation and that s. 96 is directed towards recovering funds for creditors. This gives me some hesitancy about whether Van Rensberg J.A.’s reasoning ought to apply in the context of s. 96.

225 I also note that in *Goldfinger*, Justice Myers did not seem to consider whether the *Canadian Dredge* criteria should apply under s. 96 and held (at para. 259) that “. . . the intention of [the corporate debtor] at the time should be determined by reference to the intention of Kimel, the person who directed the company’s affairs.” While there is little discussion of attributing intent in this decision, it does provide some basis for finding that courts should readily infer that the intent of the corporate debtor is that of the person directing the company’s affairs without engaging in the *Canadian Dredge* analysis.

*The effect of principles of statutory interpretation*

226 The Monitor and the Trustee submit that principles of statutory interpretation support their view that the *Canadian Dredge* formulation of attribution of intent should not apply in cases involving s. 96 of the BIA. They urge on this court a purposive interpretation that provides protection to the debtors' creditors as the section is intended to do.

227 They submit that the rules of statutory interpretation favour a broad interpretation of s. 96, including the definition of debtor. The Supreme Court of Canada in *Royal Bank of Canada v. North American Life Assurance Co.* [1996] 1 S.C.R. 325 indicated that fraudulent conveyance law should be interpreted liberally in favour of creditors:

All the provincial fraud provisions are clearly remedial in nature, and their purpose is to ensure that creditors may set aside a broad range of transactions involving a broad range of property interests, where such transactions were effected for the purpose of defeating the legitimate claims of creditors. Therefore, the statutes should be given the fair, large and liberal construction and interpretation that best ensures the attainment of their objects, as required by provincial statutory interpretation legislation . . .

228 I think that, additionally, there are sound policy considerations that support the interpretation advanced by the Trustee and the Monitor. Policy considerations are relevant to the proper interpretation of a statute. Ruth Sullivan, in her text *Statutory Interpretation* 2nd edition. Irwin Law: Toronto: 2007 at page 245, notes that courts have generally begun to accept that "direct appeal[s] to policies . . . are relevant to the text to be interpreted." Indeed, in the context of the *Bankruptcy Act*, Iacobucci J. stated in *Marzetti v. Marzetti* [1994] 2 S.C.R. 765:

My opinion is, furthermore, fortified by public policy considerations . . . In s. 68 of the *Bankruptcy Act*, Parliament has indicated that, before wages become divisible among creditors, it is appropriate to have 'regard to the family responsibilities and personal situations of the bankrupt.' This demonstrates, to my mind, an overriding concern for the support of families.

229 Given that the BIA is concerned with providing proper redress to creditors, the "intention of the debtor" in s. 96 should be interpreted liberally to include the intention of individuals in control of the corporation, regardless of whether those individuals had any intent to defraud the corporation itself.

230 For these reasons, I find that the corporate attribution doctrine as set out in *Canadian Dredge* ought not to apply in these applications made pursuant to s. 96 of the BIA, and John Aquino's intent to defeat creditors ought to be attributed to BCCL and **Forma-Con**.

231 As a directing mind and a shareholder of BCCL and **Forma-Con**, John Aquino exercised total control over the false invoicing schemes, in respect of which he tacitly acknowledged his wrongdoing. He conceded that the corporate debtors received no consideration for the payments made in the false invoicing schemes (excluding 230). Ralph and Steven deny any knowledge of these schemes. This degree of control by John Aquino, in and of itself, militates in favour of imputing his intent to defeat creditors to BCCL and **Forma-Con**.

232 The majority decision in *DBDC Spadina Ltd.* is instructive on the point. Although the case was overturned by the Supreme Court in *Christine DeJong*, in my view, the majority's reasoning applies aptly in the context of s. 96. The majority made special note of the relaxed burden of proof in civil cases:

70 . . . The case law has applied *Canadian Dredge* in the criminal and civil contexts without discrimination. In my view, it does not follow, however, that the criteria need be applied in a rigid, identical, fashion in all circumstances. The burden of proof is less onerous in civil cases. This particular civil case involves a complex multi-real estate transaction investment fraud, perpetrated over an extended period of time, and implicating numerous corporate actors (operating at the instance of the fraudster) and numerous victims. In these circumstances, it makes sense that, of the *Canadian Dredge* criteria, (b) and (c) at least may be approached in a less demanding fashion than would be the case were *mens rea* for

purposes of establishing criminal responsibility in play.

233 The Court of Appeal noted the impugned action in *Christine DeJong* (assisting in the breach of a fiduciary duty) was fault-based rather than receipt-based, which strengthened its view that the *Canadian Dredge* criteria should be applied less strictly:

71 Contrary to the view expressed by my colleague, I do not think it is the case in such circumstances that the claimant must necessarily show “evidence of each company’s individual benefit from the scheme” (at para. 234). As noted earlier, and as I shall explain more fully below, liability for knowing assistance is fault-based rather than receipt-based and does not require the defendant to have obtained a benefit from the defaulting fiduciary’s breach. To apply criterion (c) of *Canadian Dredge* — “by design or result partly for the benefit of the company” — too strictly therefore makes little sense, as it would risk muddying the distinction between the two categories of claim. (emphasis added)

234 Finally, the majority noted that characterizing the corporations as victims of the fraud was artificial and seemed to undermine the policy reasons underlying the identification doctrine:

82 My colleague’s approach is also influenced by her view that the Listed Schedule C Companies are, themselves, victims of the fraud. If that were the case, it may be a consideration in determining whether liability may be avoided on overall “equity” grounds, discussed further below. However, I do not think it has much bearing on the “directing and controlling mind” analysis or on the analysis of whether the Listed Schedule C Companies in fact assisted and participated in the fraudulent breach of fiduciary duty. In addition, as I shall explain later, I do not view the Listed Schedule C Companies as being “victims” of the fraud; rather, their investors are the victims of the fraud.

235 While the Supreme Court rejected the majority’s reasoning in that case, in my view, the approach has merit in the context of the objectives of s. 96. Many of the points made by the majority apply with equal force to the policy considerations underlying the *BIA*. Accordingly, I find that for the purposes of s. 96 of the *BIA*, **John Aquino’s** intent may be attributed to each of BCCL and **Forma-Con**.

#### d) Were the Respondents parties or privies to the transactions?

236 The Monitor submits that all of the Bondfield Respondents were parties or privies to the Bondfield impugned transactions relating to the false invoicing scheme. **John Aquino**, 230, the Solano Estate and all of the BCCL Supplier Respondents colluded in the drafting of phony invoices, the directing and receiving of payments for the purpose of stripping funds from BCCL, from which they benefited and caused others to benefit. The individual Bondfield Respondents benefited from the false invoicing scheme as well. They were also involved in the incorporation and/or management of the shell companies. The evidentiary record supports this finding.

237 The Trustee asserts that **John Aquino**, the Solano Estate, and all of the **Forma-Con** Supplier Respondents were parties to the impugned transactions relating to the false invoicing scheme. They were involved in one or more of drafting phony invoices and directing or receiving of payments for the purposes of stripping funds from **Forma-Con**. They may also have caused others to benefit from the transactions and they received benefits themselves. I agree. The evidentiary record also supports this finding.

238 The individual **Forma-Con** Respondents, as well as 230, were privies to the transactions because they had knowledge about the transfers, and were dealing with the parties to the transfers. They received benefits themselves. The individual Respondents (other than the Solano Estate and 230) also established and/or operated the shell companies. The evidentiary record supports this finding.

239 In *Peoples Department Store Inc. (Trustee of) v. Wise* 2004 SCC 68, [2004] 3 S.C.R. 461, the Supreme Court considered the purpose of s. 96 [then s. 100] of the *BIA* in considering the definition of “privy”. The Supreme Court held:



The primary purpose of [s. 96] of the *BIA* is to reverse the effects of a transaction that stripped value from the estate of a bankrupt person. It makes sense to adopt a more inclusive understanding of the word “privity” to prevent someone who might receive indirect benefits to the detriment of a bankrupt’s unsatisfied creditors from frustrating the provision’s remedial purpose. The word “privity” should be given a broad reading to include those who benefit directly or indirectly from and have knowledge of a transaction occurring for less than fair market value. In our opinion, this rationale is particularly apt when those who benefit are the controlling minds behind the transaction.

240 The courts have interpreted the term “privity” to include those persons who have knowledge of a transaction for less than fair market value and benefit either directly or indirectly from it: *Bank of Montreal v. EL04 Inc.* 2012 ONCA 90.

241 Section 96 extends liability to privies, who can be held jointly and severally liable. The remedy extends not only to the parties to the transfers at issue, but also to any person who “directly or indirectly, receives a benefit or causes a benefit to be received by another person.” Given the collaborative involvement of the Bondfield Respondents and the **Forma-Con** Respondents in the false invoicing schemes at BCCL and **Forma-Con**, respectively, and the expansive definition of a privy, all of the Bondfield Respondents and all of the **Forma-Con** Respondents may be held liable in respect of all of the impugned transactions underpinning these false invoicing schemes.

242 The individual Bondfield Respondents, the individual **Forma-Con** Respondents, and 230 have provided no explanation for the impugned transactions related to the false invoicing schemes or the false invoices themselves. They do not deny their involvement in these impugned transactions and they do not deny that they personally benefited from these impugned transactions. None of them has provided any evidence to rebut the presumptions drawn from the badges of fraud outlined in the evidence of each of the Monitor and the Trustee.

243 Coccia argues that she should be exempt from any liability because she was only provided with a chart showing what she was paid in the false invoicing scheme after she had filed her responding materials, and because she denies being a director of any BCCL or **Forma-Con** Supplier Respondent. She also submits that she was not provided with the bank documents allegedly signed by her on behalf of Supplier Respondents until her cross-examination. Further, she argues that if it is found she played a role, she should not be held liable because, in relation to the other Respondents, her role would be insignificant and inconsequential.

244 I find that Coccia is liable for her involvement in the false invoicing schemes. She did not deny that she received money from the BCCL Supplier Respondents nor did she deny that she had signing authority on the bank accounts of Supplier Respondents. At her examination, she refused to answer any questions about the banking documents she was alleged to have signed.

245 However, given the limited role that the evidence indicates Coccia played in the BCCL false invoicing scheme, I would limit her liability to the extent of the benefit she derived from her involvement, which I find to be \$88,008. Given the limited role that the evidence indicates Coccia played in the **Forma-Con** false invoicing scheme, I would limit her liability with regard to that false invoicing scheme to the extent of the benefit she derived from her involvement, being the value of the cheques paid to her by the **Forma-Con** Supplier Respondents.

### *The Fund Cycling Scheme*

246 The Trustee makes no allegation of any fund cycling scheme involving **Forma-Con**.

247 The Monitor conceded that it does not have information connecting Anastasio, Coccia and Caruso to the BCCL transfers to 230 as part of the alleged fund cycling scheme and it does not seek to hold them liable in respect of those transfers.

248 The Monitor seeks to hold only **John Aquino** and 230 liable for the funds withdrawn from BCCL through the alleged fund cycling scheme.

249 The Monitor submits that the transfers from BCCL directly to 230 during the Bondfield review period are part of

**John Aquino's** overall pattern of improper removal of funds from BCCL. Specifically, the Monitor asserts that **John Aquino** removed significant sums from BCCL and placed them in 230. Then, he went further to deceive BCCL's creditors by disguising the payments that he received through the alleged fund cycling scheme. Specifically, he would create a false sense of corporate liquidity in BCCL for a period of time, at year end, when stakeholders were more likely to review its financial status. He did this by contributing money to BCCL late in the year, under the guise of capital injections, which he also characterizes as shareholder loans, and then, early in the following year, he would return the funds to 230 for his own benefit. The Monitor asserts that these steps were being taken during the same time period during which the false invoicing scheme was underway, and they helped to mask the impact of that scheme on Bondfield's liquidity and financial strength, and on Bondfield's creditors.

250 This assertion is supported by **John Aquino's** own evidence. In his affidavit sworn June 14, 2020, **John Aquino** states: "capital injections were advanced to BCCL annually in or around . . . December on a temporary basis in order to increase the cash on hand and working capital of BCCL for the purposes of increasing the borrowing and bonding capacity of BCCL . . . I had understood that bonding companies required a financial snapshot of BCCL at the beginning of the fiscal year to assess the condition and financial security of the company. . . . Bondfield group would submit to lenders, amongst others, a financial snapshot as of the beginning of the year, which portrayed a more favourable and positive outlook as a result of the Capital Injections."

251 The Monitor argues that any payment to BCCL by **John Aquino**, via 230, and then repaid to 230 by BCCL, was made with BCCL funds transferred to 230 at undervalue, both inside and outside of the Bondfield review period. According to the Monitor's reports, BCCL made transfers out to 230 totalling \$14,029,369 that fell squarely within the Bondfield review period. However, the Monitor's reports show that there were additional transfers from BCCL to 230 totalling \$9,507,544 made prior to the Bondfield review period. The Monitor does not claim any damages in respect of, or a return of, these pre-review period transfers, but asserts that they are relevant to **John Aquino's** claims for offsets for any amounts owing by him in respect of the transfers between 230 and BCCL during the Bondfield review period, and they are relevant to showing a pattern of illegitimate transfers from BCCL to 230.

252 Of the \$14,029,369 transferred from BCCL to 230 during the Bondfield review period, \$2,000,000 was transferred within the first year of the commencement of the *CCAA* proceedings. **John Aquino** signed a cheque for payment of \$2,000,000 to 230 on April 6, 2018. Accordingly, it constitutes a transfer at undervalue regardless of the intent of the payment, if there was no consideration for the transfer.

253 The Monitor asserts that the books and records for BCCL are not consistent with any alleged entitlement of **John Aquino** to the funds received from the false invoicing scheme or the alleged fund cycling scheme, with the possible exception of certain limited bonus payments or legitimate shareholder loan amounts. The Monitor further asserts that any compensation or shareholder loan amounts that **John Aquino** alleges were legitimately paid by BCCL to him via 230 are only a small portion of the overall funds the Monitor seeks to recover.

254 The Monitor further asserts that the core of a transfer at undervalue claim is an absence or diminution in value, and that in the case of monetary transfers without consideration, the transfer at undervalue is equal to the amount of the funds removed. To the extent that **John Aquino** seeks to claim that "value" was provided to Bondfield as a result of the inflows from 230 to BCCL in the Bondfield review period, the Monitor contends that it is also relevant to consider the effect of transfers outside the Bondfield review period. It asserts that the cycle of outflows and inflows is all part of the same pattern or series of transactions. As such, the value provided to BCCL through any inflows from 230 during the Bondfield review period can only be assessed in light of their effects on the totality of the schemes.

255 The outflows from BCCL to 230 within the Bondfield review period were \$14,029,369. The inflows to BCCL from 230 within the Bondfield review period amount to \$17,300,000. **John Aquino** claims to be entitled to a credit of \$17,300,000 against outflows from BCCL during the Bondfield review period without any reference to the value in the transfers from BCCL to 230 prior to the Bondfield review period. He asserts that the \$17,300,000 that 230 loaned to BCCL came from his own funds or funds that he borrowed specifically for the purposes of lending to BCCL to improve its financial situation. Within the Bondfield review period, accounting for all ins and outs, 230 is in a net positive position at the end of the period and appears to be owed \$3,270,631. The Monitor does not dispute this point.

256 The Monitor asserts, however, that because it has no knowledge of any significant source of funds that **John Aquino** had outside of Bondfield, it is probable, based on information available to it, that any funds flowing in from 230 to BCCL originated from funds removed from BCCL, whether through the alleged fund cycling scheme, the false invoicing scheme, or otherwise. Therefore, any alleged capital injection made by 230 to BCCL was made, at least in part, with funds transferred by BCCL to 230 for no consideration, and any return of those funds by BCCL to 230 would be a transfer at undervalue. The Monitor asserts that when the totality of the transfers from BCCL to 230 before and during the Bondfield review period is considered, it is apparent that the transfer of funds from BCCL to 230 far exceeds the transfers from 230 into BCCL, even if a part of those transfers includes **John's** own funds (e.g., Christmas bonuses and salary). The Monitor's report shows that the total funds transferred from BCCL to 230 between 2012 and 2018 is \$23,493,287.

257 In this regard, the Monitor also relies on Ralph's evidence that **John Aquino's** only source of income is the Bondfield Group. It also relies on **John Aquino's** evidence on a motion for a Mareva injunction in these proceedings, in which he stated that he had insufficient funds to support his lifestyle expenses of \$60,000 per month.

258 The Monitor's argument raises two issues. The first is whether it has met its onus to show that most of the transfers from BCCL to 230 within the Bondfield review period were transfers for which no consideration was provided. The second is whether the Monitor can review the transactions in the pre-Bondfield review period for the purpose of determining damages during the Bondfield review period.

*a) Has the Monitor demonstrated that the transfers from BCCL to 230 during the Bondfield review period were transfers at undervalue?*

259 The Monitor asserts that it is "probable", based on information available to it, that any funds flowing in from 230 to BCCL between 2012 and 2018 originated from funds removed from BCCL, whether through the alleged fund cycling scheme, the false invoicing scheme, or otherwise.

260 It asserts that the books and records of BCCL are not consistent with any alleged entitlement of **John Aquino** to the funds received through the alleged fund cycling scheme or the false invoicing scheme with the exception of certain limited bonus payments to **John Aquino**, and that any alleged employment compensation or shareholder loan amounts are only a small portion of the overall funds forming part of the fund cycling scheme.

261 **John Aquino** asserts that the Monitor has not met its onus to show that the amounts transferred by BCCL to 230 during the Bondfield review period were transfers at undervalue.

262 **John Aquino** asserts that the payments from BCCL to 230 during the Bondfield review period, in the total amount of \$14,029,369, were not transfers at undervalue because they were payments made in the ordinary course of business. He asserts that these payments include Christmas bonuses of \$678,000 on December 19, 2014, \$734,500 on December 17, 2015, and \$565,000 on December 21, 2016, for a total of \$1,977,500. Further, he asserts that the payments also include repayments of loans temporarily made to BCCL in the form of capital injections.

263 In his testimony, Mr. Micciola, a former Controller employed by BCCL, stated that the Christmas bonuses described by **John Aquino** in his testimony were in fact paid to **John Aquino**. Mr. Micciola provided documentary evidence in support of these payments in the form of copies of the cheques, one for each of the said Christmas bonuses paid. Also attached to Mr. Micciola's affidavit are records of deposit showing that the cheques were deposited into the bank account for 230.

264 **John Aquino**, Mr. DiPede, and Mr. Micciola all gave evidence that Christmas bonuses were discussed between Steven, **John Aquino** and Mr. DiPede and paid in the ordinary course of business. Ralph, **John Aquino** and Steven would sign Christmas bonus cheques. They also testified that compensation payable to some employees of the Bondfield Group was paid to their holding companies as opposed to them directly.

265 Mr. Micciola and **John Aquino** gave evidence that, like **John Aquino**, Steven was paid a Christmas bonus on or about the very same dates in 2014, 2015 and 2016, in the amounts of \$350,000, \$350,000 and \$250,000, respectively, and that **John Aquino** and Steven discussed and approved the Christmas bonuses. Ralph deposed that he was not aware of the Christmas bonuses.

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266 **John Aquino** also asserts that he made loans to BCCL from time to time and BCCL repaid the loans. He states that these temporary loans were known to Ralph and Steven, as well as Mr. DiPede, who carried out the transfers of funds.

267 For example, in his June 14, 2020 affidavit, he states that in March 2018 he borrowed \$7,500,000, which he then lent to BCCL, via 230, and that \$5,500,000 of that loan was recorded in his shareholder loan account with the Bondfield Group at that time. The bank statement for 230 shows funds of \$12,744,239 being deposited into the account for 230 at that time. **John Aquino** says that these are funds loaned from Cameron Stevens Mortgage Capital to himself and a co-borrower. Subsequent withdrawals from 230 were made on each of March 10, 2018, March 17, 2018, and March 20, 2018, in the amounts of \$4,000,000, \$2,000,000 and \$1,500,000, respectively, for a total amount of \$7,500,000. **John Aquino** also produced copies of corresponding cheques from 230 to BCCL on the same dates in the same amounts. He asserts that these loans were part of the \$17,300,000 advanced by 230 to BCCL during the Bondfield review period. He also points to the CHS Report for evidence that \$5,500,000 was added to **John Aquino's** shareholder loan account in March 2018 in respect of the March 10, 2018 loan of \$4,000,000 and the March 20, 2018 loan of \$1,500,000. There is no evidence of the \$2,000,000 loan having been recorded as a shareholder loan, but **John Aquino's** evidence is that it was repaid to 230 on April 6, 2018. That transfer is consistent with the Monitor's records. **John Aquino** asserts that this \$2,000,000 payment from BCCL to 230 cannot be a transfer at undervalue as alleged by the Monitor because it was clearly a repayment of a loan by 230 to BCCL.

268 **John Aquino** also submits that 230 made loans to BCCL in March 2016 and on June 22, 2017 in the amounts of \$1,000,000 and \$500,000, respectively, and that these loans are also recorded in his shareholder loan account as confirmed in the CHS Report. Accordingly, **John Aquino** asserts that the Monitor has not proven that the alleged Bondfield impugned transfers from BCCL to 230 as part of the alleged fund cycling scheme were transfers at undervalue because **John Aquino** can show that there was consideration for these transfers.

269 I find that the Monitor has not adduced sufficient direct or circumstantial evidence to show that the amounts transferred to 230 by BCCL during the Bondfield review period were transfers at undervalue for which there was no consideration.

*b) May the Monitor review transactions prior to the Bondfield review period?*

270 The Monitor only seeks to recover \$14,029,369 (13,985,798 CAD + 35,030 USD), which represents the total transfers out of BCCL and into 230 during the Bondfield review period. The Monitor argues that the inflows from 230 to BCCL, which the Monitor and **John Aquino** agree total \$17,300,000, are entirely offset by the absence of value in all pre-Bondfield review period outflows. In other words, even if some of the funds transferred by 230 to BCCL during the Bondfield review period were legitimately owned by 230, the value of the funds transferred by BCCL to 230 at undervalue, over the entire period from 2012 to 2018, far exceeds any funds that 230 could claim as legitimately its own.

271 Notwithstanding that courts tend to deal with timelines under the *BIA* in a strict fashion, the Monitor submits that taking into account the distribution of funds from BCCL to 230 prior to the Bondfield review period to determine whether value was provided is consistent with the ordinary treatment of the repayment of debts and the application of the “rule in Clayton’s case . . . sometimes referred to as the ‘first-in, first-out’ rule. Under this rule, where a debtor borrows successive amounts of money, each repayment will apply against the oldest outstanding debt, unless the debtor specifies otherwise”: *Dhawan v. Shails et al.* 2018 ONSC 7116, 85 B.L.R. (5th) 294 (Div. Ct.) (para. 55).

272 The *BIA* sets out a complete framework in ss. 95 and 96, which is aimed at ensuring fairness and predictability: Dr. Janis P. Sarra, The Honourable Geoffrey B. Morawetz, and The Honourable L.W. Houlden, The 2019–2020 Annotated Bankruptcy and Insolvency Act (Toronto: Thomson Reuters, 2019) at 610. Most cases that deal with the statutory review periods do so to determine whether a transfer occurred within that period. Courts deal with these timelines in a strict fashion; once a transfer is established to have occurred outside the review period, it is excluded from the analysis: *Montor Business Corp.*

273 I have not been provided with any authority in support of a monitor’s or a trustee’s authority to review transactions outside of the five-year review period prescribed by the *BIA* for the purposes of establishing the source of funds allegedly transferred within the review period. I do not see a principled basis on which such a review should be permitted, especially in

this case where I find that the Monitor has not proven that the transfers that occurred in the pre-Bondfield review period between BCCL and 230 were, in fact, transfers at undervalue for which there was no consideration.

274 There is no evidence of tracing the payments from BCCL to 230 during the pre-Bondfield review period with any explanation of the purpose or lack of purpose or evidence of consideration or lack of consideration. The Monitor merely submits that “it is probable”, based on information available to it, that the funds flowed into 230 from BCCL as part of the false invoicing scheme or the alleged fund cycling scheme. If indeed some of the funds originated from the Bondfield false invoicing scheme, it would appear that the Monitor is attempting a double recovery of those amounts.

## DISPOSITION

### *A. The Bondfield Application*

275 In light of my finding that BCCL and the Bondfield Respondents were not acting at arm’s length in respect of the Bondfield impugned transactions, s. 96(1)(b) of the BIA is engaged.

276 Section 96(1)(b)(ii) of the BIA encompasses a transaction that occurred within five years prior to the date of the commencement of the CCAA proceedings, which I have found is April 3, 2019, if it intended to defraud, defeat or delay a creditor. The evidence establishes that all of the Bondfield impugned transactions undertaken as part of the false invoicing scheme were made with an intent to defraud, defeat or delay creditors and are therefore brought within s. 96(1)(b)(ii).

277 Accordingly, pursuant to s. 96 of the BIA, the payments by BCCL made in respect of the false invoices during the Bondfield review period, which I find to be April 3, 2014 to April 3, 2019, in the total amount of \$21,807,693, are transfers at undervalue. The Bondfield Respondents, each of which or whom was either a party or a privy to the transfers are ordered to pay, on a joint and several liability basis (excepting Coccia), to the Monitor \$21,807,693. This amount is the difference between the monies paid by BCCL to the BCCL Supplier Respondents and the value of the services or materials provided by them to BCCL, which I found to be nil. As noted, Coccia’s liability is limited to \$88,008.

278 The Monitor has not met its onus to show that any of the Bondfield impugned transactions as they relate to the alleged fund cycling scheme are transfers at undervalue within s. 96(1)(b)(ii). Accordingly, the Monitor is not entitled to recover 13,985,743 CAD and 35,030 USD allegedly transferred as part of a fund cycling scheme.

### *B. The Forma-Con Application*

279 In light of my finding that Forma-Con and the Forma-Con Respondents were not acting at arm’s length in respect of the Forma-Con impugned transactions, s. 96(1)(b) of the BIA is engaged.

280 Section 96(1)(b)(ii) of the BIA encompasses a transaction that occurred within five years prior to the date of the first bankruptcy event, which I have found is December 19, 2019, if it intended to defraud, defeat or delay a creditor. The evidence establishes that all of the Forma-Con impugned transactions undertaken as part of the false invoicing scheme were made with an intent to defraud, defeat or delay creditors and are therefore brought within s. 96(1)(b)(ii).

281 Accordingly, pursuant to s. 96 of the BIA, the payments by Forma-Con made in respect of the false invoices during the Forma-Con review period, which I find to be December 19, 2014 to December 19, 2019, in the total amount of \$11,366,890, are transfers at undervalue. The Forma-Con Respondents, each of which or whom was either a party or privy to the transfers, are ordered to pay, on a joint and several liability basis (excepting Coccia and 664 Ontario), to the Trustee \$11,366,890. This amount is the difference between the monies paid by Forma-Con to the Forma-Con Supplier Respondents and the value of the services or materials provided by them to Forma-Con, which I found to be nil. As noted, Coccia’s liability is limited to the value of the cheques paid to her by the Forma-Con Supplier Respondents.

282 Because the evidence indicates that 664 Ontario was not involved in the false invoicing scheme during the Forma-Con review period to the same degree as the other Forma-Con Supplier Respondents, and it has not benefited to the same extent, its liability is limited to the benefit it derived from its involvement, which I find to be \$90,400.

*Set Off*

283 **John Aquino** submits that, based on the CHS Report, he has made shareholder loans in the amount of \$11,900,000. He asserts that if he is found liable for any of the impugned transactions, he should be entitled to set off such damages against this shareholder loan amount. He has not provided evidence to establish an entitlement to legal or equitable set off in the context of these insolvency and bankruptcy proceedings. Such relief is denied.

284 Although Anastasio claims that each of **John Aquino**, Ralph and Steven were aware of and agreed that he would be paid a fee of 3,750,000 USD for his services relating to the Deutsche Bank term sheet, he has provided no documentary or corroborating evidence in support of his alleged claim against the Bondfield Group in this amount. In **John Aquino's** affidavit sworn July 27, 2020, he states that Anastasio made an introduction at Deutsche Bank, but he makes no mention of any fee owing to Anastasio for his services. Anastasio has not established an entitlement to legal or equitable set off. Accordingly, I find that Anastasio has no right of set off in this amount as against his liability for the Bondfield impugned transactions and the **Forma-Con** impugned transactions.

*Costs*

285 The parties are strongly encouraged to agree on the matter of costs. If they cannot, they may arrange a 9:30 am scheduling appointment before me to set a date for costs submissions.

*Applications granted in part.*

This is Exhibit 21 referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



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A commissioner for taking Affidavits

## COURT OF APPEAL FOR ONTARIO

CITATION: Ernst &amp; Young Inc. v. Aquino, 2022 ONCA 202

DATE: 20220310

DOCKET: C69263, C69264, C69278, C69305, C69306, C69318 &amp; C69321

Lauwers, Coroza and Sossin JJ.A.

DOCKET: C69263

BETWEEN

Ernst & Young Inc., in its capacity as Court-Appointed Monitor of  
Bondfield Construction Company Limited

Applicant (Respondent)

and

John Aquino, Marco Caruso, Giuseppe Anastasio a.k.a. Joe Ana, Lucia Coccia a.k.a. Lucia Canderle, The Estate of Michael Solano, Giovanni Anthony Siracusa a.k.a. John Siracusa, 2483251 Ontario Corp. a.k.a. Clearway Haulage, 2420595 Ontario Ltd. a.k.a. Strada Haulage, 2304288 Ontario Inc., 2466601 Ontario Inc. a.k.a. MMC Contracting, 2420570 Ontario Ltd. a.k.a. MTEC Construction, Time Passion, Inc. and RCO General Contracting Ltd.

Respondents (Appellants)

DOCKET: C69264

AND BETWEEN

KSV Kofman Inc. in its capacity as Trustee-in-Bankruptcy of  
1033803 Ontario Inc. and 1087507 Ontario Limited

Applicant (Respondent)

and



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John Aquino, Marco Caruso, Giuseppe Anastasio a.k.a. Joe Ana, The Estate of Michael Solano, Lucia Coccia a.k.a. Lucia Canderle, ~~Dominic Dipede~~, 2483251 Ontario Corp. a.k.a. Clearway Haulage, MMC General Contracting, MTEC Construction, Strada Haulage, 2104664 Ontario Inc. and 2304288 Ontario Inc.

Respondents (Appellants)

DOCKET: C69278

AND BETWEEN

KSV Kofman Inc. in its capacity as Trustee-in-Bankruptcy of  
1033803 Ontario Inc. and 1087507 Ontario Limited

Applicant (Respondent)

and

John Aquino, Marco Caruso, Giuseppe Anastasio a.k.a. Joe Ana, The Estate of Michael Solano, Lucia Coccia a.k.a. Lucia Canderle, ~~Dominic Dipede~~, 2483251 Ontario Corp. a.k.a. Clearway Haulage, MMC General Contracting, MTEC Construction, Strada Haulage, 2104664 Ontario Inc. and 2304288 Ontario Inc.

Respondents (Appellant)

DOCKET: C69305

AND BETWEEN

Ernst & Young Inc., in its capacity as Court-Appointed Monitor of Bondfield  
Construction Company Limited

Applicant (Respondent)

and

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John Aquino, Marco Caruso, Giuseppe Anastasio a.k.a. Joe Ana, Lucia Coccia a.k.a. Lucia Canderle, The Estate of Michael Solano, Giovanni Anthony Siracusa a.k.a. John Siracusa, 2483251 Ontario Corp. a.k.a. Clearway Haulage, 2420595 Ontario Ltd. a.k.a. Strada Haulage, 2304288 Ontario Inc., 2466601 Ontario Inc. a.k.a. MMC Contracting, 2420570 Ontario Ltd. a.k.a. MTEC Construction, Time Passion, Inc. and RCO General Contracting Ltd.

Respondents (Appellant)

DOCKET: C69306

AND BETWEEN

Ernst & Young Inc., in its capacity as Court-Appointed Monitor of  
Bondfield Construction Company Limited

Applicant (Respondent)

and

John Aquino, Marco Caruso, Giuseppe Anastasio a.k.a. Joe Ana, Lucia Coccia a.k.a. Lucia Canderle, The Estate of Michael Solano, Giovanni Anthony Siracusa a.k.a. John Siracusa, 2483251 Ontario Corp. a.k.a. Clearway Haulage, 2420595 Ontario Ltd. a.k.a. Strada Haulage, 2304288 Ontario Inc., 2466601 Ontario Inc. a.k.a. MMC Contracting, 2420570 Ontario Ltd. a.k.a. MTEC Construction, Time Passion, Inc. and RCO General Contracting Ltd.

Respondents (Appellants)

DOCKET: C69318

AND BETWEEN

KSV Kofman Inc. in its capacity as Trustee-in-Bankruptcy of  
1033803 Ontario Inc. and 1087507 Ontario Limited

Applicant (Respondent)

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and

John Aquino, Marco Caruso, Giuseppe Anastasio a.k.a. Joe Ana, The Estate of Michael Solano, Lucia Coccia a.k.a. Lucia Canderle, ~~Dominic Dipede~~, 2483251 Ontario Corp. a.k.a. Clearway Haulage, MMC General Contracting, MTEC Construction, Strada Haulage, 2104664 Ontario Inc. and 2304288 Ontario Inc.

Respondents (Appellants)

DOCKET: C69321

AND BETWEEN

Ernst & Young Inc., in its capacity as Court-Appointed Monitor of  
Bondfield Construction Company Limited

Applicant (Respondent)

and

John Aquino, Marco Caruso, Giuseppe Anastasio a.k.a. Joe Ana, Lucia Coccia a.k.a. Lucia Canderle, The Estate of Michael Solano, Giovanni Anthony Siracusa a.k.a. John Siracusa, 2483251 Ontario Corp. a.k.a. Clearway Haulage, 2420595 Ontario Ltd. a.k.a. Strada Haulage, 2304288 Ontario Inc., 2466601 Ontario Inc. a.k.a. MMC Contracting, 2420570 Ontario Ltd. a.k.a. MTEC Construction, Time Passion, Inc. and RCO General Contracting Ltd.

Respondents (Appellant)

Michael Citak and Chris Junior, for the appellants John Aquino and 2304288 Ontario Inc.

George Corsianos, for the appellant Marco Caruso

Terry Corsianos, for the appellants Giuseppe Anastasio and Lucia Coccia-Canderle

Brian Belmont, for the appellant 2104664 Ontario Inc.

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Alan Merskey, Evan Cobb and Stephen Taylor, for the respondent Ernst & Young Inc., in its capacity as Court-Appointed Monitor of Bondfield Construction Company Limited

Jeremy Opolsky and Craig Gilchrist, for the respondent KSV Restructuring Inc. in its capacity as Trustee-in-Bankruptcy of 1033803 Ontario Inc. and 1087507 Ontario Limited

Heard: September 1 & 2, 2021 by video conference

On appeal from the order of Justice Bernadette Dietrich of the Superior Court of Justice, dated September 15, 2020 (C69306 & C69318) and the judgments of Justice Dietrich, dated March 19, 2021, with reasons reported at 2021 ONSC 527, 88 C.B.R. (6th) 60 (C69263, C69264, C69278, C69305, C69306, C69318 & C69321).

**Lauwers J.A.:**

## **A. OVERVIEW**

[1] John Aquino was the directing mind of Bondfield Construction Company Limited and its affiliate Forma-Con Construction. He and his associates carried out a false invoicing scheme over a number of years by which they siphoned off tens of millions of dollars from both companies.

[2] The monitor and the trustee challenged the false invoicing scheme and sought to recover some of the money under s. 96 of the *BIA*<sup>1</sup> and s. 36.1 of the *CCAA*.<sup>2</sup> They asserted that the false invoicing schemes were implemented by

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<sup>1</sup> *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*").

<sup>2</sup> *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("*CCAA*").

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means of “transfers at undervalue”<sup>3</sup> by which John Aquino “intended to defraud, defeat or delay a creditor”.

[3] John Aquino and most of the other participants, as the application judge noted, “have conceded that no value was provided” to Bondfield and Forma-Con for the fraudulent transfers. However, they boldly assert that at the time they took the money, both companies were financially strong and healthy enough to sustain the frauds. They say this establishes that they did not intend to defeat any actual creditors. They also argue that John Aquino’s intent cannot be imputed to either Bondfield or Forma-Con so that s. 96(1)(b)(ii)(B) of the *BIA* cannot be used to require them to repay what they took.

[4] The application judge required John Aquino and the other participants to repay the money they took through the false invoicing scheme and held them jointly and severally liable.<sup>4</sup>

[5] I would dismiss the appeals for the reasons that follow. I begin with the basic facts, next set out the issues, and then carry out the analysis.

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<sup>3</sup> Defined in s. 2 of the *BIA* as: “a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor.”

<sup>4</sup> The application judge also found that transactions relating to an alleged fund cycling scheme were not captured under s. 96, but that scheme is not at issue in this appeal.

## B. THE FACTS

[6] Bondfield was a construction company that operated in the Greater Toronto Area and elsewhere. Its affiliate, 1033803 Ontario Inc., commonly known as Forma-Con, was in the concrete forming business. Bondfield and Forma-Con were part of the Bondfield Group,<sup>5</sup> a full-service group of construction companies that carried on business in the Greater Toronto Area and Southern Ontario starting in the mid-1980s.

[7] Before its insolvency, the Bondfield Group was run by the Aquino family. Ralph Aquino founded the enterprise. He was joined by his son, John Aquino, in 1994 and by his son, Steven Aquino, in 2000.

[8] By 2018, the Bondfield Group was in financial trouble. Bondfield's bonding company, Zurich Insurance Company Ltd., engaged Ernst & Young Inc. to review the financial situation of the Bondfield Group. This eventually led Bondfield to start proceedings under the CCAA on April 3, 2019. The court appointed Ernst & Young Inc. as the monitor of Bondfield and some of its affiliates. On December 19, 2019, the court appointed KSV Restructuring Inc. as the trustee in bankruptcy of Forma-Con.

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<sup>5</sup> I use "Bondfield" to denote Bondfield Construction Company Limited, as distinct from the Bondfield Group. The application judge referred to Bondfield Construction Company Limited as "BCCL".

[9] The monitor and the trustee discovered that Bondfield and Forma-Con had illegitimately paid out tens of millions of dollars to John Aquino and several of the other appellants under a false invoicing scheme, which is described in detail by the application judge. Both the monitor and the trustee brought applications for various forms of declaratory relief, the monitor under a combination of s. 36.1 of the CCAA and s. 96 of the *BIA* and the trustee under the latter only.

**(1) The Bondfield Application**

[10] The monitor learned that between April 3, 2014 and April 3, 2019, which was the five-year statutory review period under the *BIA*, John Aquino and his associates took \$21,807,693 from Bondfield by means of a false invoicing scheme.<sup>6</sup>

[11] In cross-examination, Mario Caruso, Giuseppe Anastasio, and Lucia Coccia-Canderle – individuals who were involved in operating the Bondfield supplier parties – conceded that the suppliers who falsely invoiced Bondfield provided no value for the transfers. John Aquino made the same admissions. However, these participants denied an intent to defraud, defeat, or delay Bondfield's actual creditors because the company was not then insolvent or in danger of insolvency. The Solano Estate insisted that it had no knowledge of the

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<sup>6</sup> The suppliers involved in this scheme were 2483251 Ontario Corp. a.k.a. Clearway Haulage ("Clearway"), 2420595 Ontario Ltd. a.k.a. Strada Haulage ("Strada"), 2466601 Ontario Inc. a.k.a. MMC Contracting ("MMC"), 2420570 Ontario Ltd. a.k.a. MTEC Construction ("MTEC"), Time Passion, Inc. ("Time Passion"), and RCO General Contracting Inc. ("RCO").

impugned Bondfield transactions, while Anthony Siracusa and Time Passion did not respond.

[12] The application judge granted the declarations the monitor sought concerning the Bondfield false invoicing scheme and required the Bondfield parties to repay \$21,807,693 on a joint and several liability basis (other than Coccia-Canderle, whose liability was limited to \$88,008).

## **(2) The Forma-Con Application**

[13] The trustee discovered that between 2011 and 2017, Forma-Con had paid more than \$34 million to certain suppliers under the false invoicing scheme. Between December 19, 2014 and December 19, 2019, which was the five-year review period under the *BIA*, Forma-Con paid over \$11 million to certain purported suppliers.<sup>7</sup>

[14] As in the Bondfield application, under cross-examination, John Aquino, Caruso, Anastasio, and Coccia-Canderle conceded that suppliers that falsely invoiced Forma-Con provided no value for the transfers (not including 230<sup>8</sup>), but maintained that they had no intent to defraud, defeat, or delay Forma-Con's actual creditors.

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<sup>7</sup> The Forma-Con suppliers were Clearway, MMC, MTEC, Strada, 2304288 Ontario Inc. ("230"), which was John Aquino's personal holding company, and 2104664 Ontario Inc. ("664 Ontario").

<sup>8</sup> Despite the individual Forma-Con parties' exclusion of 230 from their concessions, the application judge found that 230 was involved in the false invoicing scheme: *Ernst & Young Inc. v. Aquino*, 2021 ONSC 527, 88 C.B.R. (6th) 60 ("Decision Below"), at paras. 120, 242.



[15] 664 Ontario contended that it had provided value in the form of consulting services to Forma-Con regarding a hospital project in Hawkesbury. The Solano Estate asserted that it had no knowledge of the impugned Forma-Con transactions.

[16] The application judge granted the declarations the trustee sought concerning the Forma-Con false invoicing scheme, and required the Forma-Con parties to repay \$11,366,890 on a joint and several liability basis (other than 664 Ontario, whose liability was limited to \$90,400, and Coccia-Canderle, whose liability was limited to the value of the cheques paid to her by the Forma-Con suppliers).

### **C. THE ISSUES**

[17] There are four issues, which I address in turn:

1. Did the application judge err in finding that s. 96 of the *BIA* could be used by the monitor and the trustee to recover the money John Aquino and his associates took from Bondfield and Forma-Con?
2. Are the defences of legal and equitable set-off available to John Aquino and the other appellants who claim them?
3. Did the application judge err in finding 664 Ontario to be part of the false invoicing scheme?
4. Should the application judge have converted the applications into an action, or, if not, have required a trial on the financial position of Bondfield and Forma-Con?

## D. ANALYSIS

### (1) Can s. 96 of the *BIA* be used by the monitor and the trustee to recover the money John Aquino and his associates took from Bondfield and Forma-Con?

[18] The interpreter’s task in statutory interpretation is to discern the legislature’s intention in order to give effect to it.<sup>9</sup> The interpreter must attend to text, context, and purpose.<sup>10</sup> After discussing the text, purpose, and legislative history of s. 96, I attend to the governing principles and to their application to the facts in this case.

#### (a) The text and purpose of s. 96 of the *BIA*

[19] Section 96 of the *BIA* permits trustees to seek a court order voiding a transfer by the debtor to another party at “undervalue”, which is an improvident transaction from the debtor’s perspective. Section 96 provides, in part:

96(1) On application by the trustee, a court may declare that a transfer at undervalue is void as against... the trustee — or order that a party to the transfer or any other person who is privy to the transfer<sup>11</sup>, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if

...

(b) the party was not dealing at arm’s length with the debtor and

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<sup>9</sup> *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1, at para. 121.

<sup>10</sup> *Vavilov*, at paras. 117-24.

<sup>11</sup> Section 96(3) of the *BIA* defines a “privy” as “a person who is not dealing at arm’s length with a party to a transfer and, by reason of the transfer, directly or indirectly, receives a benefit or causes a benefit to be received by another person.”

(i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy, or

(ii) the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and

(A) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or

(B) the debtor intended to defraud, defeat or delay a creditor. [Emphasis added.]

[20] Textually speaking, the contrast between paras. (A) and (B) makes it clear that there are circumstances in which s. 96 will apply even though the “transfer at undervalue” occurs at a time that the debtor, in this case Bondfield or Forma-Con, is not insolvent. This scenario gives rise to a problem about the meaning to be given to “creditor” in para. (B). Section 2 of the Act defines “creditor” as “mean[ing] a person having a claim provable as a claim under this Act”. The reasonable interpretation is that there must be a person to whom the debtor owes money at the moment the fraudulent transaction occurs who would be a creditor with a provable claim if the debtor were immediately insolvent.<sup>12</sup> There is an inescapable contingency to the test. There is also a prospectivity, which comes from the

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<sup>12</sup> Section 121(1) of the *BIA* concerns what constitutes a provable claim: “All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt’s discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act”.

contrast between para. (A) (“was insolvent”) and para. (B), which lacks that language and therefore implies that the debtor is not yet insolvent.

[21] Next, I would interpret the words “a creditor” in para. (B) as denoting any such creditor, not a target creditor or one necessarily known to the fraudulent debtor. It is reasonable to infer that any large enterprise in financial difficulty will have many such creditors, many of whom would not be actively known by the fraudster.

[22] I understand s. 96 to be remedial in nature.<sup>13</sup> The Supreme Court has said with respect to provincial legislation governing fraudulent conveyances and preferences: “All the provincial fraud provisions are clearly remedial in nature, and their purpose is to ensure that creditors may set aside a broad range of transactions involving a broad range of property interests, where such transactions were effected for the purpose of defeating the legitimate claims of creditors.”<sup>14</sup> This remedial purpose led the court to conclude that the legislation “should be given the fair, large and liberal construction and interpretation that best ensures the attainment of their objects”.<sup>15</sup> In my view this approach applies equally to the interpretation of s. 96 of the *BIA*.

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<sup>13</sup> This court has held that, in general, the “*BIA* is remedial legislation and should be given a liberal interpretation to facilitate its objectives”: *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508, 435 D.L.R. (4th) 416, at para. 43.

<sup>14</sup> *Royal Bank of Canada v. North American Life Assurance Co.*, [1996] 1 S.C.R. 325, at para. 59.

<sup>15</sup> *Royal Bank of Canada*, at para. 59, citing the *Interpretation Act*, R.S.C. 1985, c. I-21, s. 12.

[23] Section 96 was included in the 2009 amendments to the *BIA*. The section “combines and simplifies the principles that were established pursuant to sections 91 and 100 in the pre-2009 amendments addressing settlements and reviewable transactions, respectively”, as Robyn Gurofsky explains.<sup>16</sup> In her view: “Section 96, like section 95, is intended to create a framework for challenging transactions that have the effect of diminishing the value of the bankrupt’s estate and limiting the ability of creditors to recover all or a portion of their debt from the estate.”<sup>17</sup>

[24] Michael Myers explains the genesis of s. 96: “The law has long recognized the need to protect creditors from insolvent debtors who give away assets to third parties instead of using those assets to repay their debts.”<sup>18</sup> This is an historic concern: “[L]egislation prohibiting debtors from fraudulently dissipating their assets when heavily indebted was first enacted in England during the reign of Queen Elizabeth I in the 1500s and has been embodied into the *Fraudulent Conveyances Act* of Ontario since the late 1800s.”<sup>19</sup> Gurofsky and Myers both point out that the

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<sup>16</sup> Robyn Gurofsky, “Fraudulent Preferences and Transfers at Undervalue: A Review of the Legal Developments under the *Bankruptcy and Insolvency Act*”, in Janis P. Sarra, ed., *Annual Review of Insolvency Law*, 2011 (Toronto: Thomson Reuters, 2012) 567, at p. 584.

<sup>17</sup> Gurofsky, at p. 584 (footnote omitted).

<sup>18</sup> Michael S. Myers, “Transfers at Undervalue Under Section 96 of the Bankruptcy and Insolvency Act – A Primer”, prepared for the Law Society of Ontario’s Six-Minute Debtor-Creditor and Insolvency Lawyer Seminar (October 17, 2018), at p. 2, online: Papazian Heisey Myers, Barristers & Solicitors <[www.phmlaw.com/site\\_files/content/pdf/published\\_works/michael\\_myers/2018\\_iso\\_seminar\\_6\\_minute\\_debtor-creditor\\_and\\_insolvency\\_law.pdf](http://www.phmlaw.com/site_files/content/pdf/published_works/michael_myers/2018_iso_seminar_6_minute_debtor-creditor_and_insolvency_law.pdf)>. Myers’ analysis of s. 96 has been cited in M.A. Springman *et al.*, *Frauds on Creditors: Fraudulent Conveyances and Preferences*, loose-leaf (2022-Rel. 1) (Toronto: Thomson Reuters, 2021).

<sup>19</sup> Myers, at pp. 2-3 (footnote omitted).

idea was to prevent the dissipation of assets, especially to related recipients. They both cite Lord Hatherley L.C.'s statement from *Freeman v. Pope* that "persons must be just before they are generous and that debts must be paid before gifts can be made."<sup>20</sup> The policy of the *BIA* goes beyond this modest origin.

**(b) The governing principles and their application**

[25] In *Urbancorp Toronto Management Inc. (Re)*, van Rensburg J.A. noted that "s. 96 is a remedy to reverse an improvident transfer that strips value from the debtor's estate, where its conditions are met."<sup>21</sup> She added: "The interpretation of the section must be considered in relation to the remedy that is sought." This echoed her earlier comments that even though s. 96 is a "tool to address 'asset stripping' by a debtor", a "bankruptcy trustee or *CCAA* monitor that seeks to impugn a transfer under that provision must nevertheless meet the requirements of the... specific words used" in the section.<sup>22</sup>

[26] In order to require John Aquino and the other beneficiaries of the false invoicing scheme to repay the money they took under s. 96(1)(b)(ii)(B) of the *BIA*, the monitor and the trustee had to prove two elements: first, John Aquino and the other participants were not dealing with Bondfield and Forma-Con at arm's length; and second, at the time they took the money (during the statutory review period),

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<sup>20</sup> *Freeman v. Pope* (1870), L.R. 5 Ch. App 538, at p. 540.

<sup>21</sup> *Urbancorp Toronto Management Inc. (Re)*, 2019 ONCA 757, 74 C.B.R. (6th) 23, at para. 48.

<sup>22</sup> *Urbancorp*, at para. 40.

they “intended to defraud, defeat or delay a creditor” of Bondfield or Forma-Con. The first element is amply established by the evidence. This case turns on the second element.

[27] The obvious gap in the second element concerns the reach of the fraudsters’ intention. No doubt John Aquino and the other participants intended to defraud Bondfield and Forma-Con, but this does not immediately lead to the conclusion that they also intended at that time to defraud the creditors of Bondfield and Forma-Con. The application judge bridged the gap by imputing John Aquino’s fraudulent intention to the debtors, Bondfield and Forma-Con, and on that basis found that it could be said that “the debtor intended to defraud, defeat or delay a creditor.”

[28] Several aspects of the legal analysis are no longer in active dispute. John Aquino and his associates in the false invoicing scheme do not seriously contest their non-arm’s length status, that the transfers at issue were at undervalue, or their active intent to defraud the debtors, Bondfield and Forma-Con. Nor is there any doubt, as the application judge noted, that the transactions bristled with “badges of fraud”, including the value of the transactions being nil, the non-arm’s length status of the participants, the secrecy, and the unusual haste with which the transactions were completed.<sup>23</sup>

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<sup>23</sup> Decision Below, at paras. 156-60.

[29] John Aquino and his associates nonetheless dispute liability under s. 96 on two grounds. The first is that their fraudulent acts were not carried out at a time when Bondfield and Forma-Con were financially precarious. The second is that the fraudulent intentions of John Aquino cannot be imputed to Bondfield and Forma-Con. These are the two deep issues to be addressed in this appeal.

**(i) The timing of the fraudulent transfers**

[30] Recall the bold assertion made by John Aquino and his associates that at the time they took the money, both Bondfield and Forma-Con were sufficiently financially healthy to sustain the losses, which establishes that they did not intend to “defraud, defeat or delay” any actual creditors. The focus is on the fraudster’s intent to defraud a creditor of these companies.

[31] The court must not indulge the temptation to engage in hindsight bias. In *Montor Business Corp. (Trustee of) v. Goldfinger*, Brown J. (as he then was) stated the principle on which the appellants rely:

When inquiring into the intention of a debtor for the purposes of *BIA* s. 96(1)(a)(iii) – and the provincial preferences statutes for that matter – a court must ascertain the intention at the time of the transfer or transaction in light of the information known at that time. A court must resist the temptation to inject back into the circumstances surrounding the impugned transaction knowledge about how events unfolded after that time. The focus must remain on the belief and intention of the



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debtor at the time, as well as the reasonableness of that belief in light of the circumstances then existing.<sup>24</sup>

[32] Brown J. added a caution about the parties' beliefs as to the value of certain properties in that case: "In hindsight one might question the reasonableness of [their] belief, but the evidence given... about the parties' thinking at the time indicated a genuine belief in the value of the properties."<sup>25</sup> This he found to be evidence on which he placed "significant weight".

**(a) The application judge's reasons on the timing of the transfers**

[33] The application judge instructed herself correctly on the applicable legal principles by reference to the appropriate cases whose reach was also argued before us. She heard and recited the arguments made by John Aquino and his associates, who said that when they took the money, Bondfield and Forma-Con were financially strong.<sup>26</sup> This strength, they claim, was evidenced by the Deloitte audited financial statements<sup>27</sup> and by the report of Ross Hamilton of Cohen Hamilton Steger & Co. Inc., the forensic and investigative accounting experts retained by John Aquino (the "CHS report").<sup>28</sup> John Aquino argued that the amounts they took were relatively small, so that inferentially the thefts did not

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<sup>24</sup> *Montor Business Corp. (Trustee of) v. Goldfinger*, 2013 ONSC 6635, 8 C.B.R. (6th) 200, at para. 272 (emphasis added), aff'd 2016 ONCA 406, 351 O.A.C. 241, leave to appeal refused, and [2016] S.C.C.A. No. 361 and rev'd in part on other grounds, 2016 ONCA 407, 398 D.L.R. (4th) 266, leave to appeal refused, [2016] S.C.C.A. No. 360.

<sup>25</sup> *Montor*, at para. 274.

<sup>26</sup> Decision Below, at paras. 48, 144 and 163.

<sup>27</sup> Decision Below, at paras. 98, 165, and 167.

<sup>28</sup> Decision Below, at paras. 102-3, 165-66.

impact the companies' financial condition.<sup>29</sup> He cast the blame for the companies' collapse on the actions of Zurich as well as on the National Bank's having denied Bondfield Group an increase in its credit facility.<sup>30</sup>

[34] The application judge did not accept the CHS report as a reliable indicator of the companies' financial health because it was based on unreliable information received from the companies.<sup>31</sup> She took a similarly skeptical view of the reliability of Deloitte's financial statements, which are now the subject of litigation.<sup>32</sup>

[35] In the application judge's opinion, a debtor's financial health is relevant but not determinative regarding the debtor's intent to defraud, defeat or delay creditors, particularly where, as here, there is evidence of a number of badges of fraud. These "provide a strong evidentiary basis on which to find that each of BCCL and Forma-Con, through the actions of its president John Aquino, intended to defraud, defeat or delay its creditors."<sup>33</sup>

[36] The application judge concluded that the presence of badges of fraud "creates a rebuttable presumption of the intention to defraud, defeat or delay creditors" that has the effect of shifting the evidentiary burden "to those defending

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<sup>29</sup> Decision Below, at para. 181.

<sup>30</sup> Decision Below, at paras. 96-97.

<sup>31</sup> Decision Below, at paras. 169, 176-77 and 193.

<sup>32</sup> Decision Below, at paras. 99, 165 and 193.

<sup>33</sup> Decision Below, at para. 145.

the fraud to adduce evidence to show the absence of fraudulent intent”.<sup>34</sup> She found that John Aquino and his associates had “not rebutted the presumption of fraudulent intent”.<sup>35</sup>

[37] The application judge noted that there is “a divergence of opinion between the parties on the financial condition of the Bondfield Group during the Bondfield review period and the Forma-Con review period.”<sup>36</sup> She concluded her lengthy analysis: “The true financial condition of each of BCCL and Forma-Con at the time of each impugned transaction cannot be determined on the record before the court.”<sup>37</sup> The appellants referenced this statement in argument to attempt to undermine the certainty of the application judge’s factual findings and her conclusions. However, doing so mischaracterizes the meaning of her observation.

[38] The application judge mustered a phalanx of facts in support of her conclusions:

The transferors, being the corporate debtors, also had actual and potential liabilities, or were about to enter risky undertakings. According to the reports of the Monitor and the Trustee, both BCCL and Forma-Con had significant long-term and off-balance sheet liabilities during the relevant review periods and were guarantors on BCCL’s credit facility in respect of which there were contingent obligations in the tens of millions of dollars at the end of fiscal years 2014, 2015 and 2016. Ralph, Steven and

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<sup>34</sup> Decision Below, at para. 161, citing *Purcaru v. Seliverstova*, 2015 ONSC 6679, 69 R.F.L. (7th) 388, aff’d 2016 ONCA 610, 80 R.F.L. (7th) 28.

<sup>35</sup> Decision Below, at para. 164.

<sup>36</sup> Decision Below, at para. 165.

<sup>37</sup> Decision Below, at para. 193.

John Aquino's sister Maria Bot, were all creditors of BCCL with substantial shareholder loan accounts. The Bondfield Group was facing actual and potential liabilities, and by John Aquino's own admission was embarking on a significant expansion in its construction activities at a time when its lender, National Bank, was not prepared to increase its lending. During the relevant period, John Aquino and Ralph were temporarily transferring funds to BCCL for the sole purpose of misleading BCCL's stakeholders, including its lenders, into believing that BCCL was in a stronger financial position than it was.<sup>38</sup>

[39] The application judge noted there were a number of unusual accounting practices at Bondfield and Forma-Con:

According to the Monitor's reports, just as accounts payable were understated in BCCL's records, accounts receivable were overstated in a problematic fashion. While BCCL's contract revenues were going up, the collectability of those revenues was going down. Throughout the Bondfield review period, BCCL's accounts receivable collection was in continual decline.

...

These [unusual accounting practices] include John Aquino's admission that, during the Bondfield review period, he and Ralph routinely injected capital into BCCL to mislead BCCL's stakeholders into thinking that the Bondfield Group was financially stronger than it was; the fact that suppliers' cheques were withheld to give BCCL an opportunity to extend the time it could use the funds owing to suppliers; the fact that BCCL was entering a date later than the date shown on the supplier invoice into its accounting system, which allowed its payables to remain outstanding longer; the fact that significant

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<sup>38</sup> Decision Below, at para. 158.

adjusting journal entries had to be made regarding BCCL's revenue and profit once the Monitor was appointed; and the fact that a claim has been brought against Deloitte with respect to its audit of Bondfield Group financial statements (which it is defending). In light of these concerns, it is reasonable to infer that the financial records provided to Deloitte and to Mr. Hamilton were likely not reliable.<sup>39</sup>

[40] Even though getting an absolutely accurate picture of the financial condition of Bondfield and Forma-Con was not possible, such precision was unnecessary. The application judge accepted the description of the state of affairs discovered in the monitor's investigation. She listed the findings:

a) BCCL's financial records, prepared under the supervision of John Aquino, vastly overstated the revenues and profitability of its projects in the relevant period, causing BCCL to have to book significant adjusting journal entries under the supervision of the Monitor; b) Zurich had encountered stated losses of over \$300,000,000 to date in paying sub-trades and completing BCCL projects, which losses arose from projects and project activities started many years before the CCAA filing; c) BCCL's loan was placed in "special loans" by its prior lender, The National Bank, no later than the start of 2017; d) BCCL faced persistent liquidity challenges as evidenced in part by John Aquino's steps to inject cash into BCCL temporarily at the beginning of 2014 through 2017 in order to improve the appearance of BCCL's liquidity for the purposes of its bonding and lending arrangements; and e) the Bondfield Group's auditors, Deloitte, are the subject of litigation by both BCCL and Zurich with respect to the accuracy of the

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<sup>39</sup> Decision Below, at paras. 170, 193.

financial statements that the defending Bondfield Respondents and Forma-Con Respondents rely upon.<sup>40</sup>

[41] The application judge added context, emphasizing that John Aquino “signed a number of the cheques associated with the impugned transactions [and that in] cross-examination he stated that he would have been familiar with 100 percent of the suppliers and subtrades.”<sup>41</sup> Meanwhile, “[a]t the same time as he was authorizing payments on false invoices, [John Aquino] was injecting capital into BCCL from time to time in an attempt to disguise the true financial condition of BCCL.”<sup>42</sup> In her view: “It is reasonable to infer that John Aquino took these actions to avoid BCCL’s and Forma-Con’s obligations and defeat their creditors.”<sup>43</sup> She added that he had not “given evidence of an alternative explanation.”

[42] The application judge also addressed the question of the relatively small value of the amounts paid out on the false invoices as compared to Bondfield’s gross revenue or net profit. She was not persuaded that this ratio “absolves John Aquino of an intent to defeat creditors.”<sup>44</sup> She put the transfers in context, adding: “The amounts, whatever the quantum, were paid out at a time when John Aquino was taking deliberate steps to mislead the stakeholders of BCCL with respect to its financial position and these payments bore a number of badges of fraud”, and

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<sup>40</sup> Decision Below, at para. 168.

<sup>41</sup> Decision Below, at para. 190.

<sup>42</sup> Decision Below, at para. 191.

<sup>43</sup> Decision Below, at para. 192.

<sup>44</sup> Decision Below, at para. 182.

“[e]ach of these payments reduced the funds available to pay long-term creditors and increased bank indebtedness”.<sup>45</sup>

[43] The evidence led the application judge to conclude: “The totality of the evidence demonstrates a pattern of an intent by John Aquino, on behalf of each of BCCL and Forma-Con to defraud, defeat or delay the creditors of BCCL and Forma-Con.”<sup>46</sup> This conclusion built on her earlier finding:

The totality of the evidence, in my view, provides a firm basis for finding that John Aquino, as principal and directing mind of BCCL and Forma-Con, had fraudulent intent – an intent to defraud, defeat or delay creditors. It was in no way reasonable for him to believe that, throughout the period of the impugned transactions, BCCL and Forma-Con did not have long-term creditors, like lenders, including Ralph, who would not be defeated or delayed by the draining of tens of millions of dollars from BCCL and Forma-Con through the false invoicing schemes.<sup>47</sup>

[44] The requirement noted in *Montor* is that the “court must ascertain the intention at the time of the transfer or transaction in light of the information known at that time.”<sup>48</sup> In particular, a court must not rely on hindsight by injecting into the circumstances surrounding the impugned transactions knowledge about how

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<sup>45</sup> Decision Below, at para. 182.

<sup>46</sup> Decision Below, at para. 197.

<sup>47</sup> Decision Below, at para. 160.

<sup>48</sup> *Montor*, at para. 272.

events unfolded after that time. Contrary to the appellants' submissions, this is not what the application judge did.

[45] At the time of the fraudulent transactions under the false invoicing scheme, the interests of creditors were imperilled by the transfers because Bondfield and Forma-Con were already experiencing mounting financial difficulties. As noted above, the application judge determined that it would have been entirely unreasonable for John Aquino to believe that, during that time, the interests of the companies' creditors would not be endangered by this fraudulent scheme.<sup>49</sup> He and his associates continued on nonetheless. The application judge found that because the companies had outstanding debts at the time of the transfers, including a substantial loan from its primary lender, "there was a creditor or creditors toward whom BCCL's and Forma-Con's intent to defraud, defeat or delay could be directed", even though the companies were then "paying off current liabilities".<sup>50</sup> In other words, the fact that current liabilities were being paid did not mean that "the fraudulent transfers were never intended to defeat then-current creditors."

[46] In short, the application judge took a pragmatic view on the totality of the evidence. She found that during the review periods both Bondfield and Forma-Con

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<sup>49</sup> Decision Below, at para. 160.

<sup>50</sup> Decision Below, at para. 204.



were experiencing increasing financial difficulties, to the knowledge of John Aquino, who carried on with the false invoicing scheme. She inferred that he did this with the intent to defeat the companies' creditors. This court owes deference to the application judge's findings of fact and findings of mixed fact and law. The appellants have not established any palpable and overriding errors nor legal errors with these findings.

[47] The application judge also accepted that the false invoicing scheme might not have been solely motivated by an intention to defeat creditors. However, she noted that the monitor and trustee only had to demonstrate that one of the motives or intentions was to defraud, defeat, or delay a creditor.<sup>51</sup> As Wilton-Siegel J. explained:

[T]he relevant wording in s. 96 is to the effect that "the debtor intended to defraud, defeat or delay a creditor." Of significance, it is not that "the intention of the debtor was to defraud, defeat or delay a creditor." If it were the latter, I think an applicant would be required to establish that the principal intention of the debtor was to defeat his or her creditors. However, the wording of s. 96 does not require such a determination. Instead, I think it requires only that an applicant establish that one of the debtor's motives or intentions was to defraud, defeat or delay a creditor.<sup>52</sup>

[48] Finally, as discussed, John Aquino was aware that the interests of the companies' creditors were potentially imperilled by the false invoicing scheme.

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<sup>51</sup> Decision Below, at para. 189.

<sup>52</sup> *Juhasz Estate v. Cordiero*, 2015 ONSC 1781, 24 C.B.R. (6th) 69, at para. 54 (emphasis added).

Although the application judge did not make findings with respect to recklessness, it is clear that at a minimum, John Aquino was reckless as to whether the scheme would defraud, defeat, or delay creditors. In the criminal context, the Supreme Court has held that fraud can be established on the basis of recklessness as to the consequences of a fraudulent act. As McLachlin J. put it:

I have spoken of knowledge of the consequences of the fraudulent act. There appears to be no reason, however, why recklessness as to consequences might not also attract criminal responsibility. Recklessness presupposes knowledge of the likelihood of the prohibited consequences. It is established when it is shown that the accused, with such knowledge, commits acts which may bring about these prohibited consequences, while being reckless as to whether or not they ensue.<sup>53</sup>

[49] I see no reason why John Aquino's recklessness as to the consequences of the fraudulent transfers with respect to the interests of the companies' creditors would not be similarly sufficient for establishing the requisite intent under s. 96 of the *BIA*.<sup>54</sup>

**(ii) The imputation of John Aquino's fraudulent intent to Bondfield and Forma-Con**

[50] For the purpose of construing the words, "the debtor intended to defraud, defeat or delay a creditor" in s. 96(1)(b)(ii)(B), the debtors are Bondfield and

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<sup>53</sup> *R. v. Théroux*, [1993] 2 S.C.R. 5, [1993] S.C.J. No. 42, at para. 26.

<sup>54</sup> Recklessness is also generally sufficient in cognate areas such as knowing assistance or fraudulent misrepresentation.

Forma-Con. The application judge imputed the fraudulent intention of John Aquino in the false invoicing scheme to Bondfield and Forma-Con, and found that the trustee and the monitor could pursue the repayment of the funds taken from the fraudsters under the *BIA*.

[51] The appellants argue that the application judge erred legally because John Aquino's fraudulent intent cannot be imputed to Bondfield or Forma-Con as a matter of law, even though he was one of their directing minds. They assert that the binding principles of the common law doctrine of corporate attribution set out in *Canadian Dredge & Dock Co. v. The Queen*,<sup>55</sup> do not permit the imputation of his intention to either defrauded company. Accordingly, s. 96(1)(b)(ii)(B) of the *BIA* cannot be used to require John Aquino, or his associates as "privies" to the impugned transactions, to repay the money they took.

[52] This argument raises a thorny question about the interplay between the provisions of the *BIA* and common law doctrine. When can common law doctrine be engaged by the court in construing and applying the *BIA*? I begin by setting out the application judge's reasons. I next address this legal question and then turn to its implications for the application of the corporate attribution doctrine in this appeal.

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<sup>55</sup> *Canadian Dredge & Dock Co. v. The Queen*, [1985] 1 S.C.R. 662.

**(a) The application judge’s reasons on corporate attribution**

[53] The application judge reviewed and considered the law concerning corporate attribution. She agreed that “the actions of John Aquino were not intended to benefit BCCL and Forma-Con and they did not do so.”<sup>56</sup> In her view, if the *Canadian Dredge* test “were applied strictly, it would mean that John Aquino’s intent could not be attributed to the debtor corporations.”<sup>57</sup>

[54] However, the application judge took a different tack and concluded: “[T]he corporate attribution doctrine as set out in *Canadian Dredge* ought not to apply in these applications made pursuant to s. 96 of the *BIA*, and John Aquino’s intent to defeat creditors ought to be attributed” to Bondfield and Forma-Con.<sup>58</sup> She founded this result on several interrelated considerations:

- The incompatibility of the *Canadian Dredge* formulation “with the very purpose of s. 96 of the *BIA*, which is aimed at restoring value for the benefit of the debtor’s creditors;<sup>59</sup>
- The policy factors in *Canadian Dredge*, particularly the “social purpose” of holding a corporation responsible for the acts of its employees and the view that the doctrine’s application should only be by “judicial necessity” where it would “advantage society by advancing law and order”;<sup>60</sup>

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<sup>56</sup> Decision Below, at para. 217.

<sup>57</sup> Decision Below, at para. 217.

<sup>58</sup> Decision Below, at para. 230.

<sup>59</sup> Decision Below, at para. 218.

<sup>60</sup> Decision Below, at para. 219.

- The remedial purpose of s. 96, which is “directed towards recovering funds for creditors”;<sup>61</sup> and
- The principles of statutory interpretation, particularly the purposive approach, “[g]iven that the *BIA* is concerned with providing proper redress to creditors”.<sup>62</sup>

[55] In *DBDC Spadina Ltd. v. Walton*, van Rensburg J.A. took a strict approach to the application of the *Canadian Dredge* test, which the Supreme Court expressly approved on appeal.<sup>63</sup> However, based on the reasoning set out above, the application judge expressed “hesitancy about whether [van Rensburg J.A.’s reasoning in *Walton*] ought to apply in the context of s. 96.”<sup>64</sup>

[56] As I will explain, the application judge did not err in her approach and in her judgment. I review several points of intersection between common law doctrine and the *BIA* before turning to the specific application of the corporate attribution doctrine.

**(b) Intersections between common law doctrine and the *BIA***

[57] There are several examples of situations in which common law doctrines have been used to interpret, apply, or supplement the *BIA*, apart from the corporate

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<sup>61</sup> Decision Below, at para. 224.

<sup>62</sup> Decision Below, at paras. 226-29.

<sup>63</sup> *DBDC Spadina Ltd. v. Walton*, 2018 ONCA 60, 419 D.L.R. (4th) 409 (“*Walton*”), per van Rensburg J.A., in a dissenting opinion adopted by the Supreme Court as its reasons on appeal in *Christine DeJong Medicine Professional Corp. v. DBDC Spadina Ltd.*, 2019 SCC 30, [2019] 2 S.C.R. 530 (“*Dejong*”).

<sup>64</sup> Decision Below, at para. 224.

attribution doctrine.<sup>65</sup> I pick out four but could extend the list: the common law principles around the priority of secured claims; the doctrine of good faith; the anti-deprivation rule; and unjust enrichment.

[58] The Supreme Court has held that “Parliament is presumed to intend not to change the existing common law unless it does so clearly and unambiguously”.<sup>66</sup> This frames the legal context.

[59] First, regarding the priority of secured claims, Houlden, Morawetz, and Sarra note: “If no statutory provisions are applicable, then common law and equitable principles will be applied.”<sup>67</sup> For example, the common law rule of “first in time” will *prima facie* be followed.

[60] Second, various provisions of the *BIA* engage principles of “good faith”, including the duties of receivers under s. 247, as well as the recent addition of the s. 4.2 good faith provision. These provisions engage the common law doctrine of good faith, which also exists in the civil law. But “good faith” is not a codified concept. For example, in *CWB Maxium Financial Inc v. 2026998 Alberta Ltd*, Mah J. considered the meaning of “good faith” in the *BIA* context and applied the

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<sup>65</sup> In this context, for terminological clarity, I treat the two somewhat distinct spheres of common law and equity as together comprising “common law”.

<sup>66</sup> *Chandos Construction Ltd. v. Deloitte Restructuring Inc.*, 2020 SCC 25, 449 D.L.R. (4th) 293, at para. 29.

<sup>67</sup> Lloyd W. Houlden, Geoffrey B. Morawetz and Janis P. Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed., loose-leaf, (Toronto: Thomson Reuters, 2009), at para. 6-163. See *Bulut v. Brampton (City)*, 48 O.R. (3d) 108 (C.A.), leave to appeal refused, [2000] S.C.C.A. No. 259.

principles of good faith derived from *Bhasin v. Hrynew*<sup>68</sup> and *C.M. Callow Inc. v. Zollinger*<sup>69</sup> to give content to s. 4.2, while being cognizant of the policy objectives of the *BIA*.<sup>70</sup>

[61] The third example is the doctrine of “fraud on the bankruptcy law” and the associated anti-deprivation rule. These are common law doctrines applicable in commercial bankruptcies, as I noted in *Hutchingame Growth Capital Corporation v. Independent Electricity System Operator*.

Professor Wood explains that the anti-deprivation rule invalidates contractual provisions that remove assets otherwise available to creditors in the event of insolvency. He discusses the fraud on the bankruptcy law doctrine in *Bankruptcy and Insolvency Law* at p. 88:

Canadian courts have recognized that a contractual provision that is designed to remove value from the reach of an insolvent person’s creditors is void on the basis that it violates the public policy of equitable and fair distribution on bankruptcy. This is referred to as the “fraud on the bankruptcy law principle.” The principle can be usefully broken down into two distinct components: the anti-deprivation rule and the *pari passu* rule. The anti-deprivation rule operates by invalidating provisions that withdraw an asset that would otherwise be available to

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<sup>68</sup> *Bhasin v. Hrynew*, 2014 SCC 71, [2014] 3 S.C.R. 494.

<sup>69</sup> *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45, 452 D.L.R. (4th) 44.

<sup>70</sup> *CWB Maxium Financial Inc v. 2026998 Alberta Ltd*, 2021 ABQB 137, 25 Alta. L.R. (7th) 3, at paras. 41, 58. See also Houlden, Morawetz, and Sarra, at paras. 1-68 and 4-82 for further discussion on good faith in the *BIA* and Ari Y. Sorek and Charlotte Dion, “Good Faith in Insolvency and Restructuring: At the Intersection of Civilian and Common Law Paradigms, at a Fork in the Road or in a Merging Lane?” in Jill Corraini and the Honourable Blair Nixon, eds., *Annual Review of Insolvency Law*, 2020 (Toronto: Thomson Reuters, 2021) 34.

satisfy the claims of creditors upon the insolvency of the party or the commencement of insolvency proceedings. [Internal citations omitted.]

The common law anti-deprivation rule applies in commercial bankruptcies, including Greenview Power's bankruptcy.<sup>71</sup>

[62] The Supreme Court affirmed this understanding of the law in *Chandos*. The majority held “that the rule has existed in Canadian common law and has not been eliminated by either this Court or Parliament” and noted that “[t]he anti-deprivation rule renders void contractual provisions that would prevent property from passing to the trustee and thus frustrate s. 71 and the scheme of the *BIA*.”<sup>72</sup> The common law anti-deprivation rule thus “maximizes the assets that are available for the trustee to pass to creditors.”<sup>73</sup>

[63] The fourth example of the active engagement of common law doctrine in supplementing the *BIA* is in the area of unjust enrichment and restitution. Professor Wood points to situations in which a trustee can avoid a transaction in which an innocent recipient of the bankrupt's assets has paid some consideration to the debtor or added value. He notes that “[u]njust enrichment law may be relevant in respect of the recovery of these gains.”<sup>74</sup> He continues: “These are not matters

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<sup>71</sup> *Hutchingame Growth Capital Corporation v. Independent Electricity System Operator*, 2020 ONCA 430, at paras. 41-42 (emphasis added; citations omitted), leave to appeal refused, [2020] S.C.C.A. No. 312.

<sup>72</sup> *Chandos*, at paras. 25, 30.

<sup>73</sup> *Chandos*, at para. 30.

<sup>74</sup> Roderick Wood, *Bankruptcy and Insolvency Law*, 2nd ed. (Toronto: Irwin Law Inc., 2015), at p. 195.



that are governed by the statutes dealing with impeachable transactions, and therefore the issue may be properly resolved through the application of principles of unjust enrichment.” The common law doctrine of unjust enrichment can be used to supplement the *BIA* in circumstances where the statute itself does not fully govern the transactions at issue.

[64] I would draw several principles from this discussion of the active engagement of common law doctrine in the application of the *BIA*. Common law doctrine can be enlisted by a court to interpret and supplement the *BIA* where necessary to better achieve its purposes, one of which is to protect the interests of the bankrupt’s creditors. The common law can add content to the terms of the *BIA* not otherwise defined. In particular, the common law doctrine known as the anti-deprivation rule and its purpose of preventing a fraud on the bankruptcy is especially pertinent in this case. The use of common law doctrine must respect the policy of the *BIA*. But these principles do not license a court to do whatever it likes; the common law doctrines impose their own discipline.

[65] I turn now to the common law doctrine of corporate attribution.

**(c) The common law doctrine of corporate attribution in the bankruptcy context**

[66] Corporations are not natural persons. In view of separate corporate personality, it is no small thing to impute to a corporation the intention of its “directing mind”. On the other hand, there is the spectre that corporations might

commit criminal acts and civil delicts with impunity because these engage mental elements relevant to intentions. The corporate attribution doctrine creates a bridge between the corporation and the natural person whose “directing mind” caused the corporation to act as it did. The doctrine attributes the intent of the corporation’s directing mind to the corporation itself, whose conduct is then evaluated against the legal standard that applies to the implicated criminal or civil area of law.

[67] The Supreme Court’s current substantive teaching on the doctrine of corporate attribution is found in *Deloitte & Touche v. Livent Inc. (Receiver of)*,<sup>75</sup> which contextualizes *Canadian Dredge*. In *Livent*, the court restated the *Canadian Dredge* test:

To attribute the fraudulent acts of an employee to its corporate employer, two conditions must be met: (1) the wrongdoer must be the directing mind of the corporation; and (2) the wrongful actions of the directing mind must have been done within the scope of his or her authority; that is, his or her actions must be performed within the sector of corporate operation assigned to him. For the purposes of this analysis, an individual will cease to be a directing mind unless the action (1) was not totally in fraud of the corporation; and (2) was by design or result partly for the benefit of the corporation.<sup>76</sup>

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<sup>75</sup> *Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63, [2017] 2 S.C.R. 855, at paras. 100-4.

<sup>76</sup> *Livent*, at para. 100 (citations omitted).

[68] In the result, the court did not allow the doctrine to be used by the auditor Deloitte to defend against Livent's claim for negligence based on the fraudulent activities of its directing minds.

[69] The Supreme Court in *Dejong* clarified that *Livent* invited a flexible application of the *Canadian Dredge* test, but only to make clear that courts retain discretion not to apply the test in circumstances where attributing the actions of a directing mind to a corporation would not be in the public interest. Courts must take seriously the elements of the corporate attribution test in *Canadian Dredge*.

**(d) The corporate attribution doctrine and the BIA**

[70] Thus far, the corporate attribution doctrine has been applied in the fields of criminal and civil liability. Courts have yet to consider the doctrine in the bankruptcy and insolvency context under s. 96 of the *BIA*, making this a case of first impression.

[71] I would extract three principles from *Livent* and *Canadian Dredge* to guide the application of this doctrine in this setting. First, the court is sensitive to the context established by the field of law in which an imputation of intent to a corporation is sought to be made.

[72] Second, the court recognizes that the attribution exercise is grounded in public policy.<sup>77</sup> I would generalize the point made by the *Livent* court about *Canadian Dredge* by paraphrasing: In the legal field of inquiry – civil, criminal, or bankruptcy – the underlying question is “who should bear the responsibility for the [impugned] actions of the corporation’s directing mind?”<sup>78</sup> The policy factors that weigh in favour of imputing to a corporation the wrongdoing intent of its directing mind flow from the “social purpose” of holding the corporation responsible. In *Livent*, the court stated: “[A]s Estey J. himself recognized [in *Canadian Dredge*], the doctrine is only one of ‘judicial necessity’ and where its application ‘would not provide protection of any interest in the community’ or ‘would not advantage society by advancing law and order’, the rationale for its application ‘fades away’”.<sup>79</sup>

[73] Third, these principles “provide a *sufficient* basis to find that the actions of a directing mind be attributed to a corporation, not a *necessary* one”.<sup>80</sup> Accordingly, “[a]s a principle that is grounded in policy, and which only serves as a means to hold a corporation criminally responsible or to deny civil liability, courts retain the discretion to refrain from applying it where, in the circumstances of the case, it would not be in the public interest to do so.”<sup>81</sup>

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<sup>77</sup> *Livent*, at para. 104.

<sup>78</sup> *Livent*, at para. 102.

<sup>79</sup> *Livent*, at para. 103 (citations omitted).

<sup>80</sup> *Livent*, at para. 104 (emphasis in original).

<sup>81</sup> *Livent*, at para. 104.

[74] While this court must take the elements of the corporate attribution doctrine seriously, the genius of the common law is in its robust circumstantial adaptability.

[75] The circumstances in which the corporate attribution doctrine has traditionally been applied – the criminal and civil contexts – are quite different from the bankruptcy context. In the criminal context, the issue is whether it would be just to visit criminal liability on a corporation. As *Canadian Dredge* instructs, if the corporation benefited from the directing mind's criminal activity, imposing criminal liability might be justified. But if the criminal activities do not, by design or in result, benefit the corporation, then it is not criminally liable.

[76] The rule in the civil context seeks to determine whether it is just to visit civil liability on a corporation. Where a corporation benefits from the improper activities of the directing mind, that intent might be attributed to the corporation. But if it does not get a benefit, there is no attribution and no liability.

[77] The application of these principles is not clear in the bankruptcy arena, where the policy currents flow rather differently. In particular, attributing the intent of a company's directing mind to the company itself can hardly be said to unjustly prejudice the company in the bankruptcy context, when the company is no longer anything more than a bundle of assets to be liquidated with the proceeds distributed to creditors. An approach that would favour the interests of fraudsters over those of creditors seems counterintuitive and should not be quickly adopted.

[78] In light of these considerations, I would reframe the test for imputing the intent of a directing mind to a corporation in the bankruptcy context this way: The underlying question here is who should bear responsibility for the fraudulent acts of a company's directing mind that are done within the scope of his or her authority – the fraudsters or the creditors?

[79] Permitting the fraudsters to get a benefit at the expense of creditors would be perverse. The way to avoid that perverse outcome is to attach the fraudulent intentions of John Aquino to Bondfield and Forma-Com in order to achieve the social purpose of providing proper redress to creditors, which is the core aim of s. 96 of the *BIA*. The application judge did not err in finding that the “intention of the debtor” under s. 96 can include “the intention of individuals in control of the corporation, regardless of whether those individuals had any intent to defraud the corporation itself.”<sup>82</sup>

**(2) Are the defences of legal and equitable set-off available to John Aquino and the others claiming them?**

[80] I deal with the set-off claims of Anastasio and John Aquino separately.

**(a) Anastasio's claim to set-off**

[81] The application judge found Anastasio to be an active participant in the false invoicing scheme.<sup>83</sup> The companies associated with Anastasio – MMC and RCO

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<sup>82</sup> Decision Below, at para. 229.

<sup>83</sup> Decision Below, at paras. 24, 136.

– received more than \$4 million through the scheme.<sup>84</sup> Anastasio takes the same position as John Aquino on the merits of this appeal. He concedes that the transactions were at undervalue, essentially nil.<sup>85</sup> He also concedes that the transactions were not at arm's length.<sup>86</sup>

[82] Anastasio asserts that he is owed US\$3.75 million as his fee for introducing the Bondfield Group to Deutsche Bank, who considered providing the Group a credit facility of US\$150 million.<sup>87</sup> The application judge rejected this claim. She set out the factual background to this assertion:

Prior to Zurich's CCAA application, in 2016, National Bank denied the Bondfield Group an increase in its credit facility from \$60,000,000 to \$120,000,000. Then, the Bondfield Group entered into an \$80,000,000 loan facility with Bridging for one year at an interest rate of 13.5 percent calculated daily. In late 2017, the Bondfield Group negotiated long-term financing with Deutsche Bank, but it required an insurance policy for the construction holdbacks in which it would have priority. The insurance policy was obtained. However, a disagreement between Zurich and Deutsche Bank regarding the loan facility in relation to Zurich's bonds could not be resolved and the Deutsche Bank facility did not proceed.<sup>88</sup>

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<sup>84</sup> Decision Below, at paras. 72-73.

<sup>85</sup> Decision Below, at paras. 35, 119 and 157.

<sup>86</sup> Decision Below, at para. 138.

<sup>87</sup> Decision Below, at para. 106.

<sup>88</sup> Decision Below, at para. 97.

[83] Anastasio argues that his US\$3.75 million fee remains unpaid.<sup>89</sup> He claims a set-off for that amount against any order for repayment of the proceeds of the false invoicing scheme. However, the application judge noted that he “provided no documentary or corroborating evidence in support of his alleged claim against the Bondfield Group in this amount.”<sup>90</sup> She added that while John Aquino agreed that Anastasio introduced Bondfield to Deutsche Bank, he made “no mention of any fee owing to Anastasio for his services.” The application judge concluded that Anastasio did not establish an entitlement to any legal or equitable set-off.

[84] These are essentially factual findings to which this court owes deference. Anastasio has not pointed to any palpable and overriding error, nor error of law, with respect to these findings. I would not give effect to this ground of appeal.

**(b) John Aquino’s claims to set-off**

[85] The statutory basis for a claim to set-off is s. 97(3) of the *BIA*, which provides:

The law of set-off or compensation applies to all claims made against the estate of the bankrupt and also to all actions instituted by the trustee for the recovery of debts due to the bankrupt in the same manner and to the same extent as if the bankrupt were plaintiff or defendant, as the case may be, except in so far as any claim for set-off or compensation is affected by the provisions of this Act

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<sup>89</sup> Decision Below, at para. 106.

<sup>90</sup> Decision Below, at para. 284.



respecting frauds or fraudulent preferences. [Emphasis added.]

[86] Houlden, Morawetz, and Sarra comment on the operation of the exception under s. 97(3): “It may be that the purpose of the concluding words of s. 97(3) is to make it clear that a creditor who has to return property to the trustee as a result of the setting aside of a fraudulent preference has no right to assert a set-off.”<sup>91</sup> This is because the effect of according a set-off would be to give a preference to that creditor over other creditors. Houlden, Morawetz, and Sarra note that “the effect of the set-off is to prefer one creditor over the general body of creditors”, which “has the effect of securing the claim of the party entitled to it.”<sup>92</sup> Doing so would give a fraudster priority over other creditors for the amount set off, which is contrary to the *pari passu* principle of bankruptcy law.

[87] John Aquino asserts that his liability for any s. 96 repayments should be reduced by a total of \$19,009,987. He claims set-offs in the amounts of: (1) \$11,922,811, which is the alleged amount of his shareholder’s loan to Bondfield<sup>93</sup>; (2) \$3,270,631 on behalf of his holding company, 230, which is the difference between the inflows and outflows of cash between 230 and Bondfield during the review period (\$17.3 million cash injections against repayment of

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<sup>91</sup> Houlden, Morawetz, and Sarra, at para. 5-547.

<sup>92</sup> Houlden, Morawetz, and Sarra, at para. 5-543, discussing *King Insurance Finance (Wines) Inc. v. 1557359 Ontario Inc. (Willowdale Autobody Inc.)*, 2012 ONSC 4263, 99 C.B.R. (5th) 227.

<sup>93</sup> Decision Below, at para. 93.

\$14,029,369)<sup>94</sup>; and (3) \$3,816,545, which is the amount he argues would account for Harmonized Sales Tax input credits on the sums found to be transfers at undervalue.

[88] Although the application judge recited the evidence about the first claim, she rejected it perfunctorily on the basis that John Aquino “has not provided evidence to establish an entitlement to legal or equitable set off in the context of these insolvency and bankruptcy proceedings.”<sup>95</sup> An insight into her reasoning would have been helpful, but I would not hesitate to come to the same conclusion.

[89] The logic of the language of s. 97(3), particularly the underlined words quoted above, as explained by Houlden, Morawetz, and Sarra, is determinative. Giving effect to John Aquino’s argument would perversely reward him for his fraud. This is sufficient to dispose of John Aquino’s set-off claims. Neither legal nor equitable set-off is available to John Aquino. In support of the refusal to grant equitable set-off, I would paraphrase a hoary old equitable maxim: The one who comes to Equity must come with clean hands. John Aquino’s hands are not clean.

[90] Concerning the second set-off claim on behalf of 230, the application judge noted that the monitor did not dispute that: “Within the Bondfield review period, accounting for all ins and outs, 230 is in a net positive position at the end of the

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<sup>94</sup> Decision Below, at para. 255.

<sup>95</sup> Decision Below, at para. 283.

period and appears to be owed \$3,270,631.”<sup>96</sup> The monitor took the position that the cash flows were part of an illicit “fund cycling scheme” that were also transfers at undervalue. However, the application judge found that the monitor had not proven that claim.<sup>97</sup>

[91] But the application judge’s findings do not reinforce 230’s claim to set-off. That claim suffers from the same fundamental deficiency as John Aquino’s claims, and I would dismiss this ground of appeal on that basis.

[92] The third claim, that the application judge did not take into account HST credits, is correct. The HST issue was not addressed in her reasons. The reason the monitor gives is that this issue was not raised before her but is a new issue raised for the first time on appeal. I agree with the monitor that it is not an issue this court should consider.

**(3) Did the application judge err in finding that 664 Ontario was part of the false invoicing scheme?**

[93] The application judge noted that unlike most of the other participants in the false invoicing scheme, 664 Ontario denied involvement and asserted that it provided value for the payment by Forma-Con of an invoice in the amount of \$90,400.<sup>98</sup>

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<sup>96</sup> Decision Below, at para. 255.

<sup>97</sup> Decision Below, at paras. 269, 278.

<sup>98</sup> Decision Below, at paras. 36, 108.

[94] The application judge analyzed 664 Ontario's claim in a number of paragraphs in her decision and concluded: "Because the evidence indicates that 664 Ontario was not involved in the false invoicing scheme during the Forma-Con review period to the same degree as the other Forma-Con Supplier Respondents, and it has not benefited to the same extent, its liability is limited to the benefit it derived from its involvement, which I find to be \$90,400."<sup>99</sup>

[95] In reaching this conclusion, the application judge said: "I am left with serious doubt about the legitimacy of 664 Ontario's explanation of the payment to it. On a balance of probabilities, in light of the pattern of the false invoicing scheme, I find that 664 Ontario's invoice, like many others produced as part of the false invoicing schemes, was a transaction in which no service was given for the value received."<sup>100</sup>

[96] This conclusion was well-supported. Although 664 Ontario said that the work related to consulting services on the Hawkesbury hospital project: "The Trustee has not been able to find, and 664 Ontario has not produced, any internal records to corroborate the work or the agreement."<sup>101</sup> The application judge noted that the consulting service 664 Ontario asserts that it provided required a "high degree of structural engineering experience", which 664 Ontario did not possess as a matter

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<sup>99</sup> Decision Below, at para. 282.

<sup>100</sup> Decision Below, at para. 128.

<sup>101</sup> Decision Below, at para. 123.

of fact. She pointed out that 664 Ontario failed to provide relevant documents and correspondence regarding the involvement of a sub-consultant, refused to produce original documents, and refused to answer a number of questions in cross-examination.<sup>102</sup> The invoice at issue was solicited by Solano, who had no responsibility in the area in which 664 Ontario was operating. The method of invoicing was consistent with the other false invoices, including Solano's shady role.

[97] Finally, the application judge found that 664 Ontario was not acting at arm's length with Forma-Con, largely based on her finding that no consulting services were actually supplied.<sup>103</sup>

[98] However, because 664 Ontario's participation was limited, she did not make the company jointly and severally liable, but instead only made it liable for the payment actually received from Forma-Con.

[99] I would dismiss 664 Ontario's appeal on the basis that it failed to discharge its evidentiary burden of answering the case put forward by the trustee. It was open to the application judge to draw the adverse inferences she did. I do not discern any palpable and overriding error or error of law.

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<sup>102</sup> Decision Below, at paras. 124-25.

<sup>103</sup> Decision Below, at para. 140.

**(4) Did the application judge err in permitting the matter to proceed as an application?**

[100] John Aquino brought a motion to the application judge at the outset of the hearing to convert the combined applications of the monitor and trustee into an action, which Hainey J. had earlier refused to do. The application judge's endorsement on the motion noted that the *BIA* permitted an application as the "default procedural rule". She was aware that the *Rules of Civil Procedure*<sup>104</sup> gave her discretion to convert the application into an action or to order the trial of an issue. She instructed herself on the jurisprudence and declined to do so, concluding:

I find that Mr. Aquino has not produced sufficient evidence to persuade me that there are material facts in dispute or credibility issues that cannot be resolved without the benefit of a trial. At the heart of the application is the question of whether the impugned transactions were carried out with intent to defraud, defeat or delay creditors. The facts relevant to this fundamental question remain much the same as they were at the time Justice Hainey heard the moving parties' motion. If anything, the application has become less complex because the Respondents have now admitted that the transfers (other than the transfers relating to 230) occurred at undervalue, and they do not dispute any of the details or the operation of the false invoices scheme. Accordingly, the motion is dismissed.<sup>105</sup>

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<sup>104</sup> *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 38.10(b).

<sup>105</sup> Endorsement of Dietrich J., dated September 15, 2020, at para. 18.

[101] John Aquino identifies as the first issue in the appeal “whether the applications should have been converted into an action, and if not, whether there should have been a trial of an issue on the financial position of BCCL and Forma-Con and its application to the issues thereon”.

[102] John Aquino advances several grounds. First, he argues that he was not the only “directing mind” at Bondfield and Forma-Con and believes that his father Ralph and brother Steven should also have been embroiled, noting: “The machinery of a trial was necessary in order for the Court to test the credibility of these material players, most fundamentally on whether the Bondfield Group had an intention to defeat creditors, and whether Ralph and Steven were privy to the impugned transactions.” I agree with the application judge that this internecine fight is not relevant to the applications the monitor and the trustee brought. The application judge pointed out that it was open to John Aquino to pursue his father and sibling elsewhere. She found, quite rightly, that the participation of all three directing minds was not necessary to trigger s. 96 liability on the part of one of them.<sup>106</sup>

[103] Second, John Aquino asserts, as noted earlier, that Bondfield and Forma-Con were in strong financial shape and had no creditors at the time that he and his associates were looting them. He claims that expert evidence and cross-

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<sup>106</sup> Decision Below, at para. 196.

examination about the “true financial condition” of each company “at the time of each impugned transaction” was therefore required. I noted above that the application judge acknowledged that there was “a divergence of opinion” on the financial condition of the companies and that the “true financial condition of each of BCCL and Forma-Con at the time of each impugned transaction cannot be determined on the record before the court.”<sup>107</sup> But as described earlier, there was enough evidence to support the application judge’s conclusion: “The totality of the evidence demonstrates a pattern of an intent by John Aquino, on behalf of each of BCCL and Forma-Con to defraud, defeat or delay the creditors of BCCL and Forma-Con.”<sup>108</sup>

[104] The application judge’s discretionary decision not to convert the consolidated applications into an action or to order the trial of an issue is entitled to appellate deference, in the absence of a legal error, an error in principle, or a palpable and overriding factual error. The appellants have not identified any. I would dismiss this ground of appeal.

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<sup>107</sup> Decision Below, at paras. 165, 193.

<sup>108</sup> Decision Below, at para. 197.



**E. DISPOSITION**

[105] I would dismiss the appeals by all of the appellants with costs. With respect to the appellants other than 664 Ontario, costs in the agreed upon amount of \$75,000 all-inclusive are awarded to the respondents.

[106] If 664 Ontario and the respondents are unable to agree on costs, then the respondents may file a written submission no more than three pages in length within ten days of the date of the release of these reasons and 664 Ontario may file a written submission no more than three pages in length within ten days of the date the respondents' submission is due.

Released: March 10, 2022 "P.L."

"P. Lauwers J.A."  
"I agree. Coroza J.A."  
"I agree. Sossin J.A."

This is Exhibit <sup>22</sup> referred to in the  
Affidavit of Aidan Ball  
sworn before me this 16th day of September, 2022



A commissioner for taking Affidavits

# Appendix “W”

**To:** 'Pieter Jagarnauth'[pieter.jagarnauth@tuckerhirise.com]  
**Cc:** Daniel Rioux[DRioux@forma-con.com]; Brendan Flood[BFLood@forma-con.com]  
**From:** Gordon Graham[GGraham@forma-con.com]  
**Sent:** Mon 10/26/2015 8:22:23 PM (UTC-04:00)  
**Subject:** RE: Massey Hall: lifting drill rig

**ADDRESS:**

Forma-Con Construction  
 407 Basaltic Road, Concorde  
 ON L4K 4W8

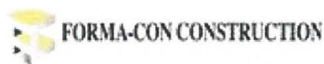
The insurance must list Forma-Con Construction as additional insured. Exactly as high-lighted in blue.

Forma-Con Construction  
 A DIVISION OF 1428508 ONTARIO LIMITED

Going forward, please also include Daniel and Brendan (my peeps) on all e-mails.

Thank you,

Gordon Graham  
 416 678-6766  
 ggraham@forma-con.com




---

**From:** Pieter Jagarnauth [mailto:pieter.jagarnauth@tuckerhirise.com]  
**Sent:** October-26-15 3:00 PM  
**To:** Gordon Graham  
**Cc:** Matthew Henderson; Bruce Rogers  
**Subject:** FW: Massey Hall: lifting drill rig

As discussed please see the correspondence below with regards to the drill rig for the Massey Hall job, please review and indicate whether you can approve the specified weights below. Once approved I will work with the company to ensure they have the necessary insurance. I understand that you typically have the company rig their own equipment but I would feel more comfortable if your forces perform the rigging. Let me know your thoughts.

Thanks

**Pieter Jagarnauth**  
 Assistant Site Manager

**TUCKER HIRISE**

3755 Victoria Park Ave  
 Toronto, ON M1W 3Z4

T 647.280.6334  
 F 416.441.0142  
 E [pieter.jagarnauth@tuckerhirise.com](mailto:pieter.jagarnauth@tuckerhirise.com)

TUCKERHIRISE.COM

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**From:** Michael Diez de Aux [mailto:mdiezdeaux@terraprobe.ca]  
**Sent:** October-26-15 1:37 PM  
**To:** Pieter Jagarnauth <[pieter.jagarnauth@tuckerhirise.com](mailto:pieter.jagarnauth@tuckerhirise.com)>  
**Cc:** Jason Crowder <[jcrowder@terraprobe.ca](mailto:jcrowder@terraprobe.ca)>; Serena Oyama <[soyama@terraprobe.ca](mailto:soyama@terraprobe.ca)>; Bruce Rogers

<[bruce.rogers@tuckerhirise.com](mailto:bruce.rogers@tuckerhirise.com)>; Matthew Henderson <[matthew.henderson@tuckerhirise.com](mailto:matthew.henderson@tuckerhirise.com)>; Jessey Holdsworth<sup>520</sup>  
<[jessey.holdsworth@tuckerhirise.com](mailto:jessey.holdsworth@tuckerhirise.com)>

**Subject:** RE: Massey Hall: lifting drill rig

Pieter,

- The drill rig fully unloaded is about 16,200 lbs.
- We can use straps to lift the augers into the hole
- The rig is about 30 years old, so no spec sheet, but the driller will send some photos shortly. It is a CME 55 drill, mounted on a bombardier track. See attached for generic photo.
- The insurance form will take about a day to turn around. Can you please send me an address for this company?
- We are tentatively booked for next Monday, November 2. As of right now this is the earliest we can get there. Please confirm.

Michael Diez de Aux MSc PEng  
Geotechnical Engineer

**TERRAPROBE INC.**

Consulting Geotechnical & Environmental Engineering  
Construction Materials, Inspection & Testing  
11 Indell Lane, Brampton ON L6T 3Y3  
t. (905) 796-2650 x184  
c. (647) 688-6453  
[terraprobe.ca](http://terraprobe.ca)

**From:** Pieter Jagarnauth [<mailto:pieter.jagarnauth@tuckerhirise.com>]

**Sent:** Monday, October 26, 2015 12:22 PM

**To:** Michael Diez de Aux <[mdiezdeaux@terraprobe.ca](mailto:mdiezdeaux@terraprobe.ca)>

**Cc:** Jason Crowder <[jcrowder@terraprobe.ca](mailto:jcrowder@terraprobe.ca)>; Serena Oyama <[soyama@terraprobe.ca](mailto:soyama@terraprobe.ca)>; Bruce Rogers <[bruce.rogers@tuckerhirise.com](mailto:bruce.rogers@tuckerhirise.com)>; Matthew Henderson <[matthew.henderson@tuckerhirise.com](mailto:matthew.henderson@tuckerhirise.com)>; Jessey Holdsworth <[jessey.holdsworth@tuckerhirise.com](mailto:jessey.holdsworth@tuckerhirise.com)>

**Subject:** RE: Massey Hall: lifting drill rig

Please see my responses below in red.

**Pieter Jagarnauth**  
Assistant Site Manager

**TUCKER HIRISE**

3755 Victoria Park Ave  
Toronto, ON M1W 3Z4

T 647.280.6334

F 416.441.0142

E [pieter.jagarnauth@tuckerhirise.com](mailto:pieter.jagarnauth@tuckerhirise.com)

TUCKERHIRISE.COM

**From:** Michael Diez de Aux [<mailto:mdiezdeaux@terraprobe.ca>]

**Sent:** October-26-15 9:42 AM

**To:** Pieter Jagarnauth <[pieter.jagarnauth@tuckerhirise.com](mailto:pieter.jagarnauth@tuckerhirise.com)>

**Cc:** Jason Crowder <[jcrowder@terraprobe.ca](mailto:jcrowder@terraprobe.ca)>; Serena Oyama <[soyama@terraprobe.ca](mailto:soyama@terraprobe.ca)>

**Subject:** RE: Massey Hall: lifting drill rig

Sorry, forgot one point:

- Depending on urgency, cost of finding alternative rigging, etc, you could get a crane truck in to do the lift. **This would have to approved by the owner.**
- It will take about half a day to install these wells. We can do this work in under a day for crane truck pricing purposes. You would also have to supply traffic control etc. for the mobile crane for one day.
- You would need to verify that mobile crane loads are ok for the shoring.

Michael Diez de Aux MSc PEng  
Geotechnical Engineer

**TERRAPROBE INC.**

Consulting Geotechnical & Environmental Engineering  
Construction Materials, Inspection & Testing  
11 Indell Lane, Brampton ON L6T 3Y3  
t. (905) 796-2650 x184  
c. (647) 688-6453  
[terraprobe.ca](http://terraprobe.ca)

**From:** Michael Diez de Aux  
**Sent:** Monday, October 26, 2015 9:22 AM  
**To:** 'pieter.jagarnauth@tuckerhirise.com' <[pieter.jagarnauth@tuckerhirise.com](mailto:pieter.jagarnauth@tuckerhirise.com)>  
**Cc:** Jason Crowder <[jcrowder@terraprobe.ca](mailto:jcrowder@terraprobe.ca)>; Serena Oyama <[soyama@terraprobe.ca](mailto:soyama@terraprobe.ca)>  
**Subject:** Massey Hall: lifting drill rig

Hi Pieter,

As per our discussion just now:

- We have a drill rig available this week that weighs 18,000 lbs fully loaded. If we remove all the augers and kit, we can likely get it down under 17,600 lbs. The weight is known from prior lifts with crane trucks. **Please confirm and forward the unloaded rig weight ASAP so the forming contractor can review and approve.**
- There are no hooks. The rig is typically lifted by shackling the frame directly and using nylon straps and spreader bars. **If you can provide the spec. sheet or model number we can review the rigging requirements**
- If we can have some kind of bin/container to easily lift the augers and other misc kit into the hole, that will help. We do not have one, so it would be done with nylon straps if there are no convenient bins available. Lifting it fully loaded at 18,000 lbs is easiest but it depends on the crane capacity. **This can be done with straps**

The driller will need to provide proof of liability insurance with the tower crane operator named. **Please name "Forma-Con Construction ( A DIVISION OF 1428502 ONTARIO LIMITED)" as an additional insurer for the liability insurance.**

I will follow up on the liability insurance certificate. Please confirm the rigging (and bin, which we had not discussed). The drill rig is ready to go this week. Next week, we need to find another drill rig.

Thanks,

Michael Diez de Aux MSc PEng  
Geotechnical Engineer

**TERRAPROBE INC.**

Consulting Geotechnical & Environmental Engineering  
Construction Materials, Inspection & Testing  
11 Indell Lane, Brampton ON L6T 3Y3  
t. (905) 796-2650 x184  
c. (647) 688-6453  
[terraprobe.ca](http://terraprobe.ca)

# Appendix “X”

**To:** Gordon Graham [ggraham@forma-con.com]  
**Cc:** Bruce Rogers[bruce.rogers@tuckerhirise.com]; Brendan Flood(bflood@forma-con.com)[bflood@forma-con.com]; Jessey Holdsworth[jessey.holdsworth@tuckerhirise.com]; Matthew Henderson[matthew.henderson@tuckerhirise.com]; Brian Couto (bcouto@forma-con.com)[bcouto@forma-con.com]  
**From:** Pieter Jagarnauth[pieter.jagarnauth@tuckerhirise.com]  
**Sent:** Thur 10/29/2015 12:04:59 PM (UTC-04:00)  
**Subject:** FW: Massey Hall: Bothwell Accurate's lifting insurance  
[multi.pdf](#)

Please see attached the required insurance to use the crane from Bothwell Accurate for your records.

Thanks

**Pieter Jagarnauth**  
 Assistant Site Manager

**TUCKER HIRISE**

3755 Victoria Park Ave  
 Toronto, ON M1W 3Z4

T 647.280.6334  
 F 416.441.0142  
 E pieter.jagarnauth@tuckerhirise.com

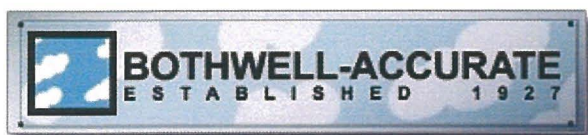
TUCKERHIRISE.COM

**From:** Ravi Khatri [mailto:RKhatri@bothwell-accurate.com]  
**Sent:** October-29-15 12:01 PM  
**To:** Pieter Jagarnauth <pieter.jagarnauth@tuckerhirise.com>  
**Cc:** Luigi Fortini <LFortini@bothwell-accurate.com>  
**Subject:** Massey Hall: lifting insurance

Pieter,

Please find attached the insurance as per requested.  
 Regards,

**Ravi Khatri | Estimator - Waterproofing**  
 6675 Rexwood Road | Mississauga, ON L4V 1V1  
**Cell:** 416.676.2159 | [RKhatri@bothwell-accurate.com](mailto:RKhatri@bothwell-accurate.com)



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 Solutions at the National Level.  
[www.rcaci.ca](http://www.rcaci.ca)

**PH:** 905.673.0615 ext 228 | **FX:** 905.362.2942  
**TF:** 1.800.762.9682 | [www.barooof.com](http://www.barooof.com)

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# CERTIFICATE OF INSURANCE

**ISSUE DATE (MM/DD/YY)**  
10/29/2015

**BROKER**



**HUB International HKMB Limited**  
595 Bay Street, Ste 900  
Toronto, ON M5G 2E3  
PHONE: 416-597-0008 FAX: 416-597-2313

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below.

Company A	Continental Casualty Company
Company B	Royal & Sun Alliance Ins. Co. of Canada
Company C	
Company D	
Company E	

**INSURED'S FULL NAME AND MAILING ADDRESS**

Bothwell-Accurate Co. Inc.  
6675 Rexwood Road  
Mississauga, ON L4V 1V1

**COVERAGES**

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

TYPE OF INSURANCE	CO LTR	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS OF LIABILITY (Canadian dollars unless indicated otherwise)	
<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCURRENCE <input checked="" type="checkbox"/> PRODUCTS AND/OR COMPLETED OPERATIONS <input checked="" type="checkbox"/> PERSONAL INJURY <input checked="" type="checkbox"/> EMPLOYER'S LIABILITY <input checked="" type="checkbox"/> TENANT'S LEGAL LIABILITY <input checked="" type="checkbox"/> NON-OWNED AUTOMOBILE <input checked="" type="checkbox"/> HIRED AUTOMOBILE	A	MPR2988669	10/31/2015	10/31/2016	EACH OCCURRENCE \$ 2,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGGREGATE \$ 2,000,000 PERSONAL INJURY \$ 2,000,000 EMPLOYER'S LIABILITY \$ 2,000,000 TENANT'S LEGAL LIABILITY \$ 1,000,000 NON-OWNED AUTOMOBILE \$ 2,000,000 HIRED AUTOMOBILE \$ 75,000	
<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> DESCRIBED AUTOMOBILES <input checked="" type="checkbox"/> ALL OWNED AUTOMOBILES <input checked="" type="checkbox"/> LEASED AUTOMOBILES ** <input type="checkbox"/> GARAGE LIABILITY <small>**ALL AUTOMOBILES LEASED IN EXCESS OF 30 DAYS WHERE THE INSURED IS REQUIRED TO PROVIDE INSURANCE</small>	A	CAE2988672	10/31/2015	10/31/2016	BODILY INJURY PROPERTY DAMAGE COMBINED \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$	
<b>EXCESS LIABILITY</b> <input checked="" type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	B	COM044494367	10/31/2015	10/31/2016	EACH OCCURRENCE \$ 8,000,000 AGGREGATE \$ 8,000,000	
<b>OTHER (SPECIFY)</b>					\$	
					\$	
					\$	
					\$	
					\$	

**DESCRIPTION OF OPERATIONS/LOCATIONS/AUTOMOBILES/SPECIAL ITEMS/ ADDITIONAL INSURED**

Project: Massey Hall Revitalization (BA #15160RK)

The Certificate Holder and Forma-Con Construction ( A DIVISION OF 1428508 ONTARIO LIMITED) is added as Additional Insured(s) to the Commercial General Liability Policy but only with respect to vicarious liability arising out of the operations of the Named Insured.

**CERTIFICATE HOLDER**

The Corporation of Massey Hall and Roy Thompson Hall  
60 Simcoe Street  
Toronto, ON M5J 2H5

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOUR TO MAIL 90 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Per: 

# Appendix “Y”

**To:** Gordon Graham [ggraham@forma-con.com]  
**Cc:** Brendan Flood (bflood@forma-con.com)[bflood@forma-con.com]; Bruce Rogers[bruce.rogers@tuckerhirise.com]; Daniel Rioux[DRioux@forma-con.com]; Brian Couto (bcouto@forma-con.com)[bcouto@forma-con.com]  
**From:** Pieter Jagarnauth[pieter.jagarnauth@tuckerhirise.com]  
**Sent:** Tue 11/24/2015 7:16:27 AM (UTC-05:00)  
**Subject:** Massey Hall - Mini Drill Rig  
[Forma-Con Construction - 2015.pdf](#)  
[CERT - 15-16 COI - Forma-Con Construction - REVISED.pdf](#)  
[Des DSC 6122.JPG](#)

Terraprobe has managed to find a substantial smaller drill rig at 3500 lbs (picture attached) with which to install the 3 monitoring wells in the Hall tomorrow. Please review the attached insurance policy for the driller and approve. Additionally I have attached an insurance policy for Graff who will be on standby should their services be needed to core the bedrock if the mini drill cannot complete.

Thanks


**Pieter Jagarnauth**  
Assistant Site Manager

**TUCKER HIRISE**

3755 Victoria Park Ave  
Toronto, ON M1W 3Z4

T 647.280.6334  
F 416.441.0142  
E pieter.jagarnauth@tuckerhirise.com

TUCKERHIRISE.COM

CERTIFICATE OF INSURANCE						
<b>NAMED INSURED</b> THE GRAFF COMPANY ULC 3210 AMERICAN DRIVE MISSISSAUGA, ON L4V 1B3			This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below.			
<b>CERTIFICATE HOLDER</b> FORMA-CON CONSTRUCTION (A DIVISION OF 1428508 ONTARIO LIMITED) 407 BASALTIC ROAD, CONCORD, ON L4K 4W8			<b>INSURANCE COMPANIES AFFORDING COVERAGE</b>			
			COMPANY A Zurich Insurance Company Ltd.			
			COMPANY B Intact Insurance Company			
			COMPANY C			
			COMPANY D			
<b>COVERAGES</b>						
This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.						
<b>LIMITS ARE IN CANADIAN DOLLARS UNLESS INDICATED OTHERWISE.</b>						
LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
TYPE OF INSURANCE	CO LTR	POLICY NUMBER	POLICY EFFECTIVE DATE (YYYY/MM/DD)	POLICY EXPIRATION DATE (YYYY/MM/DD)	LIMITS OF LIABILITY	
<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> PRODUCTS AND COMPLETED OPERATIONS <input checked="" type="checkbox"/> CROSS LIABILITY <input checked="" type="checkbox"/> TENANT'S LEGAL LIABILITY	A	8608900	2014/12/31	2015/12/31	\$ 2,000,000	EACH OCCURRENCE
					\$ 10,000,000	GENERAL AGGREGATE
					\$ 2,000,000	PRODUCTS - COMPLETED OPERATIONS AGGREGATE
					\$ 2,000,000	PERSONAL & ADVERTISING INJURY LIABILITY
					\$ 250,000	TENANT'S LEGAL LIABILITY
<b>ADDITIONAL INSURED:</b> FORMA-CON CONSTRUCTION (A DIVISION OF 1428508 ONTARIO LIMITED), but only with respect to liability arising out of the operations of the Named Insured.						
<b>NON-OWNED AUTOMOBILE LIABILITY</b>	A	8608900	2014/12/31	2015/12/31	\$ 2,000,000	EACH OCCURRENCE
<b>AUTOMOBILE LIABILITY</b> ALL OWNED & LONG TERM LEASED AUTOMOBILES <input type="checkbox"/> SCHEDULED <input checked="" type="checkbox"/> BLANKET	B	730503916	2014/12/31	2015/12/31	\$ 2,000,000	BODILY INJURY & PROPERTY DAMAGE COMBINED
<b>EXCESS LIABILITY</b> <input checked="" type="checkbox"/> UMBRELLA <input type="checkbox"/> OTHER	A	8608901	2014/12/31	2015/12/31	\$ 8,000,000	EACH OCCURRENCE
					\$ 8,000,000	AGGREGATE
<b>PROPERTY BROAD FORM</b> <input type="checkbox"/> REPLACEMENT COST <input type="checkbox"/> ACTUAL CASH VALUE		N/A				
<b>OTHER (specify)</b>		N/A				
<b>DESCRIPTION OF OPERATIONS / LOCATIONS / SPECIAL PROVISIONS:</b>						
<b>BROKER</b> The CG&B Group, part of Arthur J. Gallagher Canada Limited 120 South Town Centre Blvd. Markham, ON L6G 1C3			<b>CANCELLATION</b> Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavour to mail 30 days written notice to the certificate holder named above. Failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.			
SIGNATURE OF AUTHORIZED REPRESENTATIVE 			PRINT NAME BRENDA POWRIE		DATE (YYYY/MM/DD) 2015/11/23	

# Appendix “Z”

**To:** Gordon Graham[GGraham@forma-con.com]; Mike Kennedy[Mkenedy@forma-con.com]; Serge Pereira[SPereira@forma-con.com]; Brendan Flood[BFlood@forma-con.com]  
**Cc:** Matthew Henderson[matthew.henderson@tuckerhirise.com]; Jessey Holdsworth[jessey.holdsworth@tuckerhirise.com]; Nicholas Iordanis[nicholas.iordanis@tuckerhirise.com]; Pieter Jagarnauth[pieter.jagarnauth@tuckerhirise.com]  
**From:** Bruce Rogers[bruce.rogers@tuckerhirise.com]  
**Sent:** Fri 10/7/2016 10:56:26 AM (UTC-04:00)  
**Subject:** Nortex Roofing insurance  
[Norex roofing.pdf](#)  
[Nortex insurance certificate.pdf](#)

Gordon

Please find attached Nortex Roofing Insurance Certificate adding Forma-con as well as crew safety training including aerial lift training.

Regards,

**Bruce Rogers**

Site Manager – Massey Tower & Hall

**TUCKER HIRISE**

197 Yonge Street.

Toronto, ON M5B 1M4

T 416.901.8857 ext. 22

C 416.473.0942

E [bruce.rogers@tuckerhirise.com](mailto:bruce.rogers@tuckerhirise.com)

TUCKERHIRISE.COM

# CERTIFICATE OF INSURANCE

**DATE**  
(YYYY/MM/DD)  
2016-10-07

**BROKER**  
 **Jones DesLauriers Insurance Management Inc.**  
2375 Skymark Avenue  
Mississauga, Ontario, L4W 4Y6  
Tel: (416) 259-4625 Fax: (416) 259-7178

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below.

**INSURED****COMPANIES AFFORDING COVERAGE**

**NORTEX ROOFING LTD.**  
66 Six Point Road  
Toronto, ON  
M8Z 2X2

COMPANY A	Intact Insurance Company
COMPANY B	Unica Insurance Inc.
COMPANY C	
COMPANY D	

**COVERAGES**

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies exclusions and conditions of such policies. **LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (YYYY/MM/DD)	POLICY EXPIRATION DATE (YYYY/MM/DD)	LIMITS	
A	<b>COMMERCIAL GENERAL LIABILITY</b>	5JA095526	2016/02/20	2017/02/20		
	<input type="checkbox"/> CLAIMS MADE				BODILY INJURY & PROPERTY DAMAGE INCLUSIVE LIMITS	\$5,000,000.
	<input checked="" type="checkbox"/> OCCURRENCE				GENERAL AGGREGATE	\$5,000,000.
	<input checked="" type="checkbox"/> PRODUCTS AND/OR COMPLETED OPERATIONS				PRODUCTS / COMPLETED OPERATIONS AGGREGATE	\$5,000,000.
	<input checked="" type="checkbox"/> PERSONAL INJURY				PERSONAL INJURY	\$5,000,000.
	<input checked="" type="checkbox"/> EMPLOYER'S LIABILITY				EMPLOYERS' LIABILITY	\$1,000,000.
	<input checked="" type="checkbox"/> TENANTS LEGAL LIABILITY				TENANTS LEGAL LIABILITY	\$500,000.
	<input checked="" type="checkbox"/> NON-OWNED AUTOMOBILE				NON-OWNED AUTOMOBILE	\$5,000,000.
B	<b>AUTOMOBILE</b>	YFHOAC8650	2016/07/31	2017/07/31		
	<input type="checkbox"/> DESCRIBED AUTOMOBILES				THIRD PARTY LIABILITY	\$2,000,000.
	<input checked="" type="checkbox"/> ALL OWNED AUTOS				DEDUCTIBLE	
	<input checked="" type="checkbox"/> LEASED AUTOMOBILES					
	<b>EXCESS LIABILITY</b>					
	<input type="checkbox"/> UMBRELLA FORM				EACH OCCURRENCE	
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM				AGGREGATE	
	<input type="checkbox"/>					
	<b>OTHER (SPECIFY)</b>					
	<input type="checkbox"/>					
	<input type="checkbox"/>					
	<input type="checkbox"/>					

**DESCRIPTION OF OPERATIONS/LOCATIONS/SPECIAL CONDITIONS/OTHER:****Note: Limits are Stated in Canadian Dollars.**

**Description of Operations: Roofing Contractor**  
Project: General Construction Services for New Roof Membranes, Elgin and Winter Garden Theatre Centre, 189 Yonge Steet, Toronto, ON

Forma-con a Division of 1428508 Ontario Ltd., are added as Additional Insured but only with respect to liability arising solely out of the operations of the Named Insured and only with respect to Commercial General Liability Policy No. 5JA095526.

**CERTIFICATE HOLDER****CANCELLATION**

**Forma-con a Division of 1428508 Ontario Ltd.**  
407 Baltic Road  
Concord, ON  
L4K 4W8

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavour to mail **(30) days** written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

**AUTHORIZED REPRESENTATIVE:**  
Jones DesLauriers Insurance Management Inc.

*Christine M. Tokarsky*

# Appendix “AA”



**To:** Gordon Graham[GGraham@forma-con.com]  
**From:** Bruce Rogers[bruce.rogers@tuckerhirise.com]  
**Sent:** Tue 4/4/2017 11:12:22 AM (UTC)  
**Subject:** RE: Primo mechanical insurance doc for crane lifts

OK I'll get it changed.

Regards,

**Bruce Rogers**  
Site Manager – Massey Tower & Hall

**TUCKER HIRISE**

197 Yonge Street.  
Toronto, ON M5B 1M4

T 416.901.8857 ext. 22  
C 416.473.0942  
E [bruce.rogers@tuckerhirise.com](mailto:bruce.rogers@tuckerhirise.com)

TUCKERHIRISE.COM

**From:** Gordon Graham [mailto:GGraham@forma-con.com]  
**Sent:** Tuesday, April 04, 2017 7:11 AM  
**To:** Bruce Rogers <bruce.rogers@tuckerhirise.com>  
**Subject:** Re: Primo mechanical insurance doc for crane lifts

That is no longer the correct.

Also we are not looking for a certificate of insurance, we are looking to be named as additional insurance.

Thank you,  
Gordon Graham  
[Ggraham@forma-con.com](mailto:Ggraham@forma-con.com)  
416-678-6766

---

**From:** Bruce Rogers  
**Sent:** Tuesday, April 4, 2017 07:03  
**To:** Gordon Graham  
**Subject:** RE: Primo mechanical insurance doc for crane lifts

Has the company been sold? Or is the crane owned by another entity?  
Previous certificates were to Forma-con Const. div. of 1428508 Ont. Ltd.

Regards,

**Bruce Rogers**  
Site Manager – Massey Tower & Hall

**TUCKER HIRISE**

197 Yonge Street.  
Toronto, ON M5B 1M4

T 416.901.8857 ext. 22  
C 416.473.0942  
E [bruce.rogers@tuckerhirise.com](mailto:bruce.rogers@tuckerhirise.com)

TUCKERHIRISE.COM

**From:** Gordon Graham [mailto:GGraham@forma-con.com]

**Sent:** Tuesday, April 04, 2017 6:53 AM

**To:** Bruce Rogers <[bruce.rogers@tuckerhirise.com](mailto:bruce.rogers@tuckerhirise.com)>; Brendan Flood <[BFlood@forma-con.com](mailto:BFlood@forma-con.com)>; O'Niel Satchwell <[OSatchwell@forma-con.com](mailto:OSatchwell@forma-con.com)>; Mike Kennedy <[Mkennedy@forma-con.com](mailto:Mkennedy@forma-con.com)>

**Cc:** Matthew Henderson <[matthew.henderson@tuckerhirise.com](mailto:matthew.henderson@tuckerhirise.com)>; Jessey Holdsworth <[jessey.holdsworth@tuckerhirise.com](mailto:jessey.holdsworth@tuckerhirise.com)>; Nicholas Iordanis <[nicholas.iordanis@tuckerhirise.com](mailto:nicholas.iordanis@tuckerhirise.com)>; Pieter Jagarnauth <[pieter.jagarnauth@tuckerhirise.com](mailto:pieter.jagarnauth@tuckerhirise.com)>

**Subject:** Re: Primo mechanical insurance doc for crane lifts

Bruce,

This certificate is insufficient.

1. The company name is Forma-Construction( a division of 1033803 Ontario Inc).
2. We must be named as additional insured in the bottom right corner beside Mod and Tucker.

Thank you,

Gordon Graham

[Ggraham@forma-con.com](mailto:Ggraham@forma-con.com)

416-678-6766

---

**From:** Bruce Rogers

**Sent:** Tuesday, April 4, 2017 06:14

**To:** Gordon Graham; Brendan Flood; O'Niel Satchwell

**Cc:** Matthew Henderson; Jessey Holdsworth; Nicholas Iordanis; Pieter Jagarnauth

**Subject:** Primo mechanical insurance doc for crane lifts

Gordon

Please find attached copy of Primo Mechanical insurance documentation re: crane lifts to 9<sup>th</sup> floor mechanical room.

Regards,

**Bruce Rogers**

Site Manager – Massey Tower & Hall

**TUCKER HIRISE**

197 Yonge Street.

Toronto, ON M5B 1M4

T 416.901.8857 ext. 22

C 416.473.0942

E [bruce.rogers@tuckerhirise.com](mailto:bruce.rogers@tuckerhirise.com)

TUCKERHIRISE.COM

# Appendix “BB”

**To:** naz[naz@primomechanical.com]; 'Paul Francinelli'[paulf@primomechanical.com]  
**Cc:** Gordon Graham[GGraham@forma-con.com]; Matthew Henderson[matthew.henderson@tuckerhirise.com]; Jessey Holdsworth[jessey.holdsworth@tuckerhirise.com]; Nicholas Iordanis[nicholas.iordanis@tuckerhirise.com]  
**From:** Bruce Rogers[bruce.rogers@tuckerhirise.com]  
**Sent:** Tue 4/4/2017 11:14:27 AM (UTC)  
**Subject:** FW: Primo mechanical insurance doc for crane lifts

Please see comments from Gordon Graham, please ensure new documentation is in place ASAP. They do NOT need a certificate of insurance, they need to be named as additional insured.

Regards,

**Bruce Rogers**  
Site Manager – Massey Tower & Hall

## TUCKER HIRISE

197 Yonge Steet.  
Toronto, ON M5B 1M4

T 416.901.8857 ext. 22  
C 416.473.0942  
E bruce.rogers@tuckerhirise.com

TUCKERHIRISE.COM

---

**From:** Gordon Graham [mailto:GGraham@forma-con.com]  
**Sent:** Tuesday, April 04, 2017 6:53 AM  
**To:** Bruce Rogers <bruce.rogers@tuckerhirise.com>; Brendan Flood <BFlood@forma-con.com>; O'Niel Satchwell <OSatchwell@forma-con.com>; Mike Kennedy <Mkennedy@forma-con.com>  
**Cc:** Matthew Henderson <matthew.henderson@tuckerhirise.com>; Jessey Holdsworth <jessey.holdsworth@tuckerhirise.com>; Nicholas Iordanis <nicholas.iordanis@tuckerhirise.com>; Pieter Jagarnauth <pieter.jagarnauth@tuckerhirise.com>  
**Subject:** Re: Primo mechanical insurance doc for crane lifts

Bruce,  
This certificate is insufficient.

1. The company name is Forma-Construction( a division of 1033803 Ontario Inc).
2. We must be named as additional insured in the bottom right corner beside Mod and Tucker.

Thank you,  
Gordon Graham  
[Ggraham@forma-con.com](mailto:Ggraham@forma-con.com)  
416-678-6766

---

**From:** Bruce Rogers  
**Sent:** Tuesday, April 4, 2017 06:14  
**To:** Gordon Graham; Brendan Flood; O'Niel Satchwell  
**Cc:** Matthew Henderson; Jessey Holdsworth; Nicholas Iordanis; Pieter Jagarnauth  
**Subject:** Primo mechanical insurance doc for crane lifts

Gordon  
Please find attached copy of Primo Mechanical insurance documentation re: crane lifts to 9<sup>th</sup> floor mechanical room.

Regards,

**Bruce Rogers**  
Site Manager – Massey Tower & Hall

# **TUCKER HIRISE**

197 Yonge Street.

Toronto, ON M5B 1M4

T 416.901.8857 ext. 22

C 416.473.0942

E [bruce.rogers@tuckerhirise.com](mailto:bruce.rogers@tuckerhirise.com)

TUCKERHIRISE.COM

# Appendix “CC”

To: Gordon Graham[GGraham@forma-con.com]; Brendan Flood[BFlood@forma-con.com]; O'Niel Satchwell (OSatchwell@forma-con.com)[OSatchwell@forma-con.com] 538

Cc: Matthew Henderson[matthew.henderson@tuckerhirise.com]; Jessey Holdsworth[jessey.holdsworth@tuckerhirise.com]; Nicholas Iordanis[nicholas.iordanis@tuckerhirise.com]; Pieter Jagarnauth[pieter.jagarnauth@tuckerhirise.com]

From: Bruce Rogers[bruce.rogers@tuckerhirise.com]

Sent: Tue 4/4/2017 6:48:56 PM (UTC)

Subject: FW: Massey - REVISION

[Updated Certificate.pdf](#)

Revised insurance certificate naming you as additional insured.  
I'm not certain if the difference between Forma and Forma-con is important.  
Please advise.  
Regards,

**Bruce Rogers**  
Site Manager – Massey Tower & Hall

## **TUCKER HIRISE**

197 Yonge Street.  
Toronto, ON M5B 1M4

T 416.901.8857 ext. 22

C 416.473.0942

E [bruce.rogers@tuckerhirise.com](mailto:bruce.rogers@tuckerhirise.com)

TUCKERHIRISE.COM

**From:** Joseph Miniaci [mailto:joe@primomechanical.com]

**Sent:** Tuesday, April 04, 2017 2:40 PM

**To:** Bruce Rogers <[bruce.rogers@tuckerhirise.com](mailto:bruce.rogers@tuckerhirise.com)>

**Cc:** [naz@primomechanical.com](mailto:naz@primomechanical.com)

**Subject:** FW: Massey - REVISION

### **Joseph Miniaci**

Controller



253 Jevlan Drive, Unit 15  
Woodbridge, Ontario  
L4L 7Z6

Ph: 905-851-6718 Extension 222

Fax: 905-851-7543

The information transmitted is intended only for the addressee and may contain confidential, or proprietary and/or privileged material. Any unauthorized review, distribution or other use of or the taking of any action in reliance upon this information is prohibited. If you receive this in error, please contact the sender and delete or destroy this message and any copies. Thank you.

**CSIO**

**CERTIFICATE OF LIABILITY INSURANCE**

This certificate is issued as a matter of information only and confers no rights upon the certificate holder and imposes no liability on the Insurer.  
This certificate does not amend, extend or alter the coverage afforded by the policies below.

<b>1. CERTIFICATE HOLDER - NAME AND MAILING ADDRESS</b>		<b>2. INSURED'S FULL NAME AND MAILING ADDRESS</b>	
MOD Developments (197 Yonge ST) LP 8 Price Street, 4th Fl. Toronto, ON M4W 1Z4 & Tucker Hi-Rise Construction Inc. 3755 Victoria Park Ave Scarborough, ON		Primo Mechanical Inc, Weston Fire Protection Inc & Jevlan Realty Inc 15-253 Jevlan Dr Woodbridge, ON	
POSTAL CODE M1W 3Z4		POSTAL CODE L4L 7Z6	

**3. DESCRIPTION OF OPERATIONS/LOCATIONS/AUTOMOBILES/SPECIAL ITEMS TO WHICH THIS CERTIFICATE APPLIES (but only with respect to the operations of the Named Insured)**  
Massey Towers - 197 Yonge Street, Toronto, ON Crane Lift Various Components for Main Electrical Room - Switch Gear Etc. & Mechanical Room ie: MUA-4

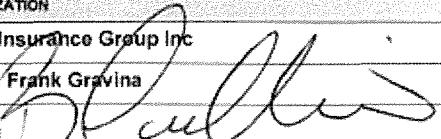
**4. COVERAGES**  
This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated notwithstanding any requirements, terms or conditions of any contract or other document with respect to which this certificate may be issued or may pertain. The insurance afforded by the policies described herein is subject to all terms, exclusions and conditions of such policies.

LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

TYPE OF INSURANCE	INSURANCE COMPANY AND POLICY NUMBER	EFFECTIVE DATE YYYY/MM/DD	EXPIRY DATE YYYY/MM/DD	LIMITS OF LIABILITY (Canadian dollars unless indicated otherwise)		
				COVERAGE	DED.	AMOUNT OF INSURANCE
<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS MADE OR <input checked="" type="checkbox"/> OCCURRENCE <input checked="" type="checkbox"/> PRODUCTS AND / OR COMPLETED OPERATIONS <input checked="" type="checkbox"/> EMPLOYER'S LIABILITY <input type="checkbox"/> CROSS LIABILITY  <input checked="" type="checkbox"/> TENANTS LEGAL LIABILITY <input type="checkbox"/> POLLUTION LIABILITY EXTENSION	Economic Mutual Insurance Compa 40173143	2016/10/1	2017/10/1	COMMERCIAL GENERAL LIABILITY BODILY INJURY AND PROPERTY DAMAGE LIABILITY - GENERAL AGGREGATE - EACH OCCURRENCE	25,000	2,000,000
				PRODUCTS AND COMPLETED OPERATIONS AGGREGATE	25,000	2,000,000
				<input type="checkbox"/> PERSONAL INJURY LIABILITY OR <input checked="" type="checkbox"/> PERSONAL AND ADVERTISING INJURY LIABILITY	25,000	2,000,000
				MEDICAL PAYMENTS		25,000
				TENANTS LEGAL LIABILITY	25,000	1,000,000
				POLLUTION LIABILITY EXTENSION		
				<input checked="" type="checkbox"/> NON OWNED AUTOMOBILES <input type="checkbox"/> HIRED AUTOMOBILES	Economic Mutual Insurance Compa 40173143	2016/10/1
<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> DESCRIBED AUTOMOBILES <input type="checkbox"/> ALL OWNED AUTOMOBILES <input type="checkbox"/> LEASED AUTOMOBILES ** ** ALL AUTOMOBILES LEASED IN EXCESS OF 30 DAYS WHERE THE INSURED IS REQUIRED TO PROVIDE INSURANCE	Economic Mutual Insurance Compa 64013652	2016/10/1	2017/10/1	BODILY INJURY AND PROPERTY DAMAGE COMBINED		
				BODILY INJURY (PER PERSON)		2,000,000
				BODILY INJURY (PER ACCIDENT)		2,000,000
				PROPERTY DAMAGE		2,000,000
<b>EXCESS LIABILITY</b> <input checked="" type="checkbox"/> UMBRELLA FORM <input type="checkbox"/>	Economic Mutual Insurance Compa 40173143	2016/10/1	2017/10/1	EACH OCCURRENCE	25,000	8,000,000
				AGGREGATE		
<b>OTHER LIABILITY (SPECIFY)</b> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>						

**5. CANCELLATION**  
Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named above, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

<b>6. BROKERAGE/AGENCY FULL NAME AND MAILING ADDRESS</b>		<b>7. ADDITIONAL INSURED NAME AND MAILING ADDRESS</b> (but only with respect to the operations of the Named Insured)	
Brokers Trust Insurance Group Inc 201 - 2780 Highway 7 Concord, ON		Forma-Con Construction a Division of 1033803 Ontario Ltd. 407 Basaltic Road Concord, ON	
POSTAL CODE L4K3R9		POSTAL CODE L4K4W8	
BROKER CLIENT ID: PRIMMEC-01			

<b>8. CERTIFICATE AUTHORIZATION</b>		CONTACT NUMBER(S)	
ISSUER <b>Brokers Trust Insurance Group Inc</b>	AUTHORIZED REPRESENTATIVE <b>Frank Gravina</b>	TYPE <b>Phone</b> NO <b>(905) 760-1515</b>	TYPE <b>Fax</b> NO <b>(905) 760-0240</b>
SIGNATURE OF AUTHORIZED REPRESENTATIVE 		TYPE NO	TYPE NO
		DATE <b>2017/4/4</b>	EMAIL ADDRESS <b>frank.gravina@brokerstrust.ca</b>



# Appendix “DD”

**To:** Gordon Graham[GGraham@forma-con.com]; Mike Kennedy[Mkenedy@forma-con.com]; Nicholas Iordanis[nicholas.iordanis@tuckerhirise.com]  
**Cc:** Pieter Jagarnauth[pieter.jagarnauth@tuckerhirise.com]  
**From:** Bruce Rogers[bruce.rogers@tuckerhirise.com]  
**Sent:** Mon 6/26/2017 10:27:22 AM (UTC-04:00)  
**Subject:** FW: insurance for hoisting by Forma-con crane  
[Glasswall 17-18 COI - Forma-Con Construction.pdf](#)

Toro insurance certificate.

Regards,

**Bruce Rogers**  
Site Manager – Massey Tower & Hall

**TUCKER HIRISE**

197 Yonge Street.  
Toronto, ON M5B 1M4

T 416.901.8857 ext. 22  
C 416.473.0942  
E [bruce.rogers@tuckerhirise.com](mailto:bruce.rogers@tuckerhirise.com)

TUCKERHIRISE.COM

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**From:** Martina Hrubesova [mailto:[martina@toroaluminum.com](mailto:martina@toroaluminum.com)]  
**Sent:** Monday, June 26, 2017 10:03 AM  
**To:** Bruce Rogers <[bruce.rogers@tuckerhirise.com](mailto:bruce.rogers@tuckerhirise.com)>  
**Subject:** FW: insurance for hoisting by Forma-con crane

Good morning Bruce

Please find attached renewed certificate as the one I sent you expires on July 01 2017

Thank you

Martina

**CERTIFICATE OF INSURANCE**

## BROKER

Jones DesLauriers Insurance Management Inc.  
2375 Skymark Ave  
Mississauga, ON, L4W 4Y6  
Tel: (416) 259-4625 Fax: (416) 259-7178

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below.

## INSURED

## COMPANIES AFFORDING COVERAGE

Toro Glasswall Inc.  
2891 Langstaff Road  
Vaughan, ON  
L4K 4Z2

COMPANY A	Aviva Insurance Company
COMPANY B	Continental Casualty Company (CNA)
COMPANY C	
COMPANY D	

## COVERAGES

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (YYYY/MM/DD)	POLICY EXPIRATION DATE (YYYY/MM/DD)	LIMITS	
A	COMMERCIAL GENERAL LIABILITY	81739706	2017/07/01	2018/07/01		
	<input type="checkbox"/> CLAIMS MADE				BODILY INJURY & PROPERTY DAMAGE INCLUSIVE LIMITS	5,000,000
	<input checked="" type="checkbox"/> OCCURRENCE				GENERAL AGGREGATE	NIL
	<input checked="" type="checkbox"/> PRODUCTS AND/OR COMPLETED OPERATIONS				PRODUCTS / COMPLETED OPERATIONS AGGREGATE	5,000,000
	<input checked="" type="checkbox"/> PERSONAL INJURY				PERSONAL INJURY	5,000,000
	<input checked="" type="checkbox"/> EMPLOYER'S LIABILITY				EMPLOYERS' LIABILITY	included
	<input checked="" type="checkbox"/> TENANTS LEGAL LIABILITY				TENANTS LEGAL LIABILITY	5,000,000
	<input checked="" type="checkbox"/> NON-OWNED AUTOMOBILE	NON-OWNED AUTOMOBILE	5,000,000			
B	AUTOMOBILE	CAE2825925	2017/07/01	2018/07/01		
	<input type="checkbox"/> DESCRIBED AUTOMOBILES				THIRD PARTY LIABILITY	2,000,000
	<input checked="" type="checkbox"/> ALL OWNED AUTOS					
	<input checked="" type="checkbox"/> LEASED AUTOMOBILES					
	EXCESS LIABILITY					
	<input type="checkbox"/> UMBRELLA FORM				EACH OCCURRENCE	
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM				AGGREGATE	
	<input type="checkbox"/>					
B	OTHER (SPECIFY)	MPR2724911	2017/07/01	2018/07/01		
	<input checked="" type="checkbox"/> COMMERCIAL PROPERTY				INSTALLATION FLOATER	1,000,000
	<input type="checkbox"/>				RENTED, BORROWED CONTRACTORS EQUIPMENT	200,000
	<input type="checkbox"/>					
	<input type="checkbox"/>					

## DESCRIPTION OF OPERATIONS/LOCATIONS/SPECIAL CONDITIONS/OTHER:

Note: Limits are Stated in Canadian Dollars.

Description of Operations: As usual to the Named Insured's business operations.

RE: Evidence of Insurance - Hoisting of Glasswall product @ Massey Towers, 197 Yonge Street, Toronto project.

Forma-Con Construction, a division of 1033803 Ontario Inc. are added as Additional Insured but only with respect to liability arising solely out of the business operations of the Named Insured and only with respect to Commercial General Liability

## CERTIFICATE HOLDER

## CANCELLATION

Attn: Fax:

Forma-Con Construction, a division of 1033803  
Ontario Ltd.  
407 Basaltic Road  
Concord, ON L4K 4W8

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavour to mail (30) days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

AUTHORIZED REPRESENTATIVE: Per: Elizabeth Ventura  
Jones DesLauriers Insurance Management Inc.



# Appendix “EE”

**To:** Pieter Jagarnauth[pieter.jagarnauth@tuckerhirise.com]  
**Cc:** Matthew Henderson[matthew.henderson@tuckerhirise.com]; Bruce Rogers[bruce.rogers@tuckerhirise.com]  
**From:** Gordon Graham[GGraham@forma-con.com]  
**Sent:** Wed 3/7/2018 3:39:52 PM (UTC-05:00)  
**Subject:** RE: Massey Tower - Lifting docs and crane usage

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NO.

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**From:** Pieter Jagarnauth [mailto:pieter.jagarnauth@tuckerhirise.com]  
**Sent:** March-07-18 3:17 PM  
**To:** Gordon Graham <GGraham@forma-con.com>  
**Cc:** Matthew Henderson <matthew.henderson@tuckerhirise.com>; Bruce Rogers <bruce.rogers@tuckerhirise.com>  
**Subject:** FW: Massey Tower - Lifting docs and crane usage

Does the waiver of subrogation on the insurance form attached suffice in lieu of a letter.

Thanks

**Pieter Jagarnauth**  
Assistant Site Manager

**TUCKER HIRISE**

3755 Victoria Park Ave  
Toronto, ON M1W 3Z4

T 647.280.6334

F 416.441.0142

E [pieter.jagarnauth@tuckerhirise.com](mailto:pieter.jagarnauth@tuckerhirise.com)

TUCKERHIRISE.COM

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**From:** Martina Hrubesova [<mailto:martina@toroaluminum.com>]  
**Sent:** March-07-18 1:21 PM  
**To:** Pieter Jagarnauth <[pieter.jagarnauth@tuckerhirise.com](mailto:pieter.jagarnauth@tuckerhirise.com)>  
**Subject:** FW: Massey Tower - Lifting docs and crane usage

Good afternoon Pieter  
Please see comments from our insurance broker  
Thank you  
Martina

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**From:** Elizabeth Ventura [<mailto:elizabethv@jdimi.com>]  
**Sent:** Wednesday, March 07, 2018 11:42 AM  
**To:** 'Martina Hrubesova'  
**Subject:** FW: Massey Tower - Lifting docs and crane usage

Good morning, Martina

I don't understand why Forma Con is requesting a formal letter. The certificate provided (see attached) includes a Waiver of

Subrogation in favour of MOD Developments (197 Yonge) LP & Tucker HiRise Construction Inc and Forma-Con Construction a division of 1033803 Ontario Ltd. 545

Subrogation is a basic insurance concept that pushes the cost of a loss onto the responsible party. Essentially, if a claim occurs and is paid on Toro's behalf by your insurance company but Toro is not technically at fault (or negligent) the insurance company has the right to go back against the at fault party to recover the amount paid.

When you agree to a waiver of subrogation in a contract you are waiving the insurance company's right to subrogate against another party.

This should suffice for Forma Con's request.

Elizabeth

---

**From:** Pieter Jagarnauth [<mailto:pieter.jagarnauth@tuckerhirise.com>]

**Sent:** Thursday, March 01, 2018 10:05 AM

**To:** 'rob colonna'

**Cc:** 'Dino Bettio'; Matthew Henderson; Bruce Rogers; Megan Tan

**Subject:** Massey Tower - Lifting docs and crane usage

As discussed yesterday Formacon prior to hoisting any of your windows onto their platform with the crane is requesting the following;

- Formacon to be named as an additional insured on your Policy, copy of another's trades attached for your reference.  
(FORMA-CON  
CONSTRUCTION, A DIVISION OF 1033803 ONTARIO LTD)
- A letter from Toro that any unintentional damage resulting for the use of their crane to your windows, Toro will not hold Formacon liable.

Thanks

**Pieter Jagarnauth**  
Assistant Site Manager

3755 Victoria Park Ave  
Toronto, ON M1W 3Z4

T 647.280.6334

F 416.441.0142

E [pieter.jagarnauth@tuckerhirise.com](mailto:pieter.jagarnauth@tuckerhirise.com)

TUCKERHIRISE.COM

# Appendix “FF”



**To:** Gordon Graham[GGraham@forma-con.com]; Mike Kennedy[Mkenedy@forma-con.com]; Brendan Flood[BFlood@forma-con.com]; O'Niel Satchwell (OSatchwell@forma-con.com)[OSatchwell@forma-con.com]  
**Cc:** Pieter Jagarnauth[pieter.jagarnauth@tuckerhirise.com]; Massimo Scalfari[massimo.scalfari@tuckerhirise.com]  
**From:** Bruce Rogers[bruce.rogers@tuckerhirise.com]  
**Sent:** Wed 5/23/2018 10:34:53 AM (UTC-04:00)  
**Subject:** insurance document for Thyssen elevator equipment crane lifts  
[Forma-Con Construction.pdf](#)

Regards,

**Bruce Rogers**  
Site Manager – Massey Tower & Hall

**TUCKER HIRISE**

197 Yonge Street.

Toronto, ON M5B 1M4

T 416.901.8857 ext. 22

C 416.473.0942

E [bruce.rogers@tuckerhirise.com](mailto:bruce.rogers@tuckerhirise.com)

TUCKERHIRISE.COM

**ACORD™ CERTIFICATE OF LIABILITY INSURANCE** DATE (MM/DD/YY)  
05/23/2018

PRODUCER <b>WILLIS CANADA INC., A WILLIS TOWERS WATSON COMPANY</b> 100 KING STREET WEST, SUITE 4700 TORONTO, ON M5X 1E4 CANADA	Serial# 183858	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	<b>INSURERS AFFORDING COVERAGE</b>		<b>NAIC#</b>
INSURED THYSSENKRUPP ELEVATOR (CANADA) LIMITED/ ASCENSEURS THYSSENKRUPP (CANADA) LIMITEE 410 PASSMORE AVENUE SCARBOROUGH, ON M1V 5C3 ATTN: ELENA WALMSLEY	INSURER A:	HDI GLOBAL SE CANADA BRANCH	
	INSURER B:	CHUBB INSURANCE COMPANY OF CANADA	
	INSURER C:		
	INSURER D:		
	INSURER E:		

**COVERAGES**  
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L NSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		<b>GENERAL LIABILITY</b>	01860294-14021 01860103-14040	10/01/17	10/01/18	EACH OCCURRENCE \$ 5,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR INCLUDING NON-OWNED AUTO				MED EXP (Any one person) \$
		GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ INCLUDED
B		<b>AUTOMOBILE LIABILITY</b>	CAC424374	10/01/17	10/01/18	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000
		<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
		<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
		<input type="checkbox"/> HIRED AUTOS				AUTO ONLY - EA ACCIDENT \$
		<input type="checkbox"/> NON-OWNED AUTOS				OTHER THAN EA ACC \$
		<input checked="" type="checkbox"/> ALL AUTOS OWNED AND/OR LEASED TO THE NAMED INSURED				AUTO ONLY: AGG \$
		<b>GARAGE LIABILITY</b>				EACH OCCURRENCE \$
		<input type="checkbox"/> ANY AUTO				AGGREGATE \$
		<b>EXCESS/UMBRELLA LIABILITY</b>				\$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				\$
		<input type="checkbox"/> DEDUCTIBLE				\$
		<input type="checkbox"/> RETENTION \$				\$
		<b>WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY</b>				WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/>
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				EL EACH ACCIDENT \$
		<b>OTHER</b>				EL DISEASE - EA EMPLOYEE \$
						EL DISEASE - POLICY LIMIT \$

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS**  
RE: PROJECT AT MASSEY TOWER AT 197 YONGE STREET  
WITH REGARDS TO THE COMMERCIAL GENERAL LIABILITY POLICY, IT IS UNDERSTOOD AND AGREED THAT FORMA-CON CONSTRUCTION (A DIVISION OF 1033803 ONTARIO INC) IS ADDED AS AN ADDITIONAL INSURED, BUT ONLY WITH RESPECT TO LIABILITY ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, ONLY TO THE EXTENT REQUIRED BY WRITTEN CONTRACT AND ONLY TO THE EXTENT THAT COVERAGE IS AFFORDED UNDER THE POLICY.

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
FORMA-CON CONSTRUCTION (A DIVISION OF 1033803 ONTARIO INC) 407 BASALTIC ROAD CONCORD, ON L4K 4W8	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE <i>[Signature]</i> RQ

**BRIDGING FINANCE INC., as agent**  
**for** **2665405** **and**  
**ONTARIO INC.**  
Applicant

**1033803 ONTARIO INC.**  
Respondents

Court File No.: CV-18-608978-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**MOD DEVELOPMENTS**  
**RESPONDING MOTION RECORD**  
**(Motion Returnable**  
**November 4, 2022)**

**MILLER THOMSON LLP**  
Vaughan Metropolitan Centre  
100 New Park Place, Suite 700  
Vaughan, ON Canada L4K 0H9

Michael Farace (LSO #: 29852S)  
Tel: 905.532.6618  
mfarace@millerthomson.com

Lawyers for MOD Developments